

MINUTES OF THE HOUSE ETHICS AND ELECTIONS COMMITTEE.

The meeting was called to order by Chairperson Representative Tony Powell at 3:30 p.m. on January 24, 2001 in Room 521-S of the Capitol.

All members were present except: Representative John Toplikar, Excused

Committee staff present: Theresa Kiernan, Revisor
Dennis Hodgins, Research
Shirley Weideman, Committee Secretary

Conferees appearing before the committee: Carol Williams, Executive Director, Governmental Ethics Commission

Others attending: See attached list.

Carol Williams, Executive Director of the Governmental Ethics Commission, was introduced by Chair Tony Powell. Ms. Williams reviewed the 2000 Annual Report of the Governmental Ethics Commission, which included the advisory opinions, campaign finance statistics, the lobbyist registrations and expenditures and the filing of complaints. (attachment #1)

Ms. Williams had two recommendations for bills to be introduced:

Define substantial interest as it relates to conflict of interest. The criteria of what you have a substantial interest in as a legislator or as a state employee is any business in which you have a legal or equitable interest of \$5,000. The Commission suggests that this be raised to \$15,000, due to inflation since it has not be raised for at least 11 years.

Without objection, it will be introduced as a committee bill.

Allow publications by professional and business associations that they normally sell, be made available to legislators for free and that they be excluded from the definition of a gift.

Without objection, it will be introduced as a committee bill.

Ms. Williams also reviewed the bill passed in 2000 and how it applies to legislators:

S Sub for HB 2627 amends the Governmental Ethics Act, designates existing and new statutes as the Campaign Finance Act, and enacts the Professional Services Sunshine Act which became effective July 1, 2000. She said there have been many questions concerning the act, but not a substantial number of complaints were filed. She also indicated that before July 1st, when a lobbyist filed a report, they listed in an aggregate amount (a singular dollar amount) all of what that lobbyist spent in a reporting period on food and beverages; it was in a total number, all the money they expended for recreation, for entertainment, for mass media communication and communication with members of their organization. Ms. Williams said that after July 1st, 2000 a lobbyist must disclose under the category of food and beverage your names if you consumed a meal, and if you are not invited as part of the whole legislature or if you are not invited as part of the entire House or as part of the entire Senate or as part of your caucus. She also indicated that the same rule applies to entertainment, which has a cap of \$40 for you and a cap of \$100 if the lobbyist goes with you. She said of most concern to legislators has been the amount of the gifts received, since there is not an exclusion of gifts to an entire group, they must be reported. Ms. Williams also told the committee that information can be accessed by the public on the Commission's web site. She said the Commission sent a memo to all legislators indicating that it will not report any gifts under \$10 value. (attachment #2) Ms. Williams answered questions from committee members.

Chairman Powell asked for input from the committee on ethics legislation and indicated that he will visit members individually next week.

Meeting was adjourned by Chairman Powell at 4:35 p.m. Next meeting will be January 29, 2001 at 3:30 p.m.

House Ethics and Elections

GUEST LIST Date January 24, 2001

Your Name	Representing
Chip Wheelers	Society of Assn Executives
St. D. P. H.	Rep. Shari Weber
Candace Mofhor	DofA, DPS
Brad Bryant	Sec. of State.
Carl Williams	GEC
Tara Gansaway	GEC
Kyle Kessler	DOB
Danielle Noel	DofA
Rylan Martin	KCCI
Bruce Dominik	Independent



**GOVERNMENTAL
ETHICS
COMMISSION**

**2000
ANNUAL
REPORT**

109 WEST 9TH, SUITE 504
TOPEKA, KANSAS 66612
785-296-4219

www.ink.org/public/gsc

PREFACE

This annual report and recommendations is submitted to the Governor and the Director of Legislative Administrative Services for transmittal to the Legislature pursuant to K.S.A. 25-4119a and K.S.A. 46-1212c. With some exceptions, the report covers the period from July 1, 1999, through June 30, 2000, the end of Fiscal Year 2000.

Occasionally, data for the first quarter of Fiscal Year 2001 is used in order to provide a more complete picture of the Commission's operations.

Table of Contents

Mission1

Responsibilities.....1

Agency Philosophy.....1

Commission Members.....2

Staff.....2

Budget.....4

Legislative Activity.....4

Organization and Operation.....5

A. Education and Public Awareness.....5

B. Advisory Opinions.....6

C. Review and Audit Program.....6

 1. Campaign Finance.....6

 2. Conflict of Interests.....7

 3. Lobbying.....9

D. Investigations.....9

E. Enforcement Programs.....10

 1. Complaints.....10

 2. Civil Penalties and Fines.....10

Conclusion.....11

Legislative Recommendations.....12



The Governmental Ethics Commission

Mission:

The Governmental Ethics Commission works to provide the public with the timely and accurate information it needs for knowledgeable participation in government and the electoral process.

The Kansas Governmental Ethics Commission was established by the Kansas Legislature in 1974 to administer, interpret, and enforce the Campaign Finance Act (K.S.A. 25-4142 *et seq.*) and laws relating to conflict of interests, financial disclosure, and the regulation of lobbying (K.S.A. 46-215 *et seq.*). These laws establish the public's right to information about the financial affairs of Kansas' public officials, lobbyists, and candidates for state and local office. The Commission also renders advisory opinions and can adopt rules and regulations under a less comprehensive conflict of interests law covering local governmental officials and employees (K.S.A. 75-4301 *et seq.*).

Agency Philosophy:

The Kansas Governmental Ethics Commission believes the strongest safeguard against unethical conduct by public officials and employees is an informed and active public. For the disclosure elements of the legislation to have meaning, the public must be made aware of the legislation and the financial disclosure information must be accessible to the public. To this end, the Commission and its staff will approach their duties with a dedicated sense of purpose and responsibility to the individuals subject to the Campaign Finance Act and State Governmental Ethics Laws and the citizens of Kansas by performing their activities in an efficient and impartial manner.

Commission Members

The Kansas Governmental Ethics Commission is a nine member, bipartisan, citizen commission authorized by K.S.A. 25-4119a. Members serve two year terms with the Commission's Chairman appointed by the Governor. The Vice-Chairman is elected by the membership. Commission appointments are made by the Governor, Attorney General, Secretary of State, Chief Justice of the Supreme Court, President of the Senate, Minority Leader of the Senate, Speaker of the House of Representatives, and the Minority Leader in the House. The Governor makes two appointments, each from a different political party.

The Commission usually meets once a month. The Commission's meetings are open to the public and information prepared by the staff for each meeting is available to the public. During FY 2000, the Commission held 12 meetings. Meetings are scheduled to address a variety of matters including the review and action on complaints filed, investigations undertaken, and audits performed. In addition, the Commission issues advisory opinions to answer questions involving interpretation of a particular section of the law, it makes policy decisions, amends and adopts new administrative regulations and handles administrative matters including personnel, budget preparations, office procedures, etc.

Commission Staff

The staff of the Commission assumes all responsibility for the daily operations of the agency which include administration, legal, investigative, audit, and clerical functions. As a service oriented agency, staff strives to assist individuals in complying with applicable laws by responding quickly, efficiently and impartially. Commission staff also works diligently to get campaign finance and lobbying data compiled, entered and posted on the Internet to be viewed by the citizens of Kansas.

Commission Members

Daniel Severt, Chairman, Democrat, Wichita
Term expires, January 31, 2002

Diane Gaede, Vice-Chairwoman, Republican, Manhattan
Term expires, January 31, 2001

Former Chief Justice Robert Miller, Republican, Topeka
Term expires, January 31, 2002

Michael Norris, Republican, Olathe
Term expires, January 31, 2001

Dale Pike, Republican, Great Bend
Term expires, January 31, 2001

John Solbach, Democrat, Lawrence
Term expires, January 31, 2001

Sabrina Standifer, Democrat, Wichita
Term expires, January 31, 2001

Dan Thiessen, Independent, Independence
Term expires, January 31, 2002

Elon Torrence, Republican, Topeka
Term expires, January 31, 2002

FY 2000 Commission Staff

Executive Director, Carol Williams
Commission & Staff Attorney, Vera Gannaway
Local Campaign Finance Director, Jana Atchison
Computer Specialist, Janet Williams
Auditor, Kelley Cochran
Auditor, Alyssa Miller
Investigator, Bill Beightel
Report Examiner, Karina Renna
Office Manager, Donna Williams
Lobbyist Coordinator, Ruth Pile

Budget

In FY 2000, the Commission was appropriated \$373,967 from the State General Fund with a fee fund limitation of \$175,297. The following chart reflects revenue and expenditures for the fiscal year.

Fiscal Year 2000 Budget	Actual
Revenue:	
State General Fund	\$373,967
Fee Fund Limitation	175,297
Total Revenue	549,264
Expenditures:	
Salaries & Benefits	394,571
Contractual Services	97,681
Commodities	4,788
Capital Outlay	6,674
Total Expenditures	503,714

Full-time staff has increased only five positions in the twenty-six years of the

agency's existence. Other operating expenditures have remained relatively constant through this time period.

Legislative Activity

Several pieces of legislation impacting the Commission and its operations were passed by the 2000 Kansas Legislature. Senate Substitute for HB 2627 became law on July 1, 2000. This new legislation requires Kansas lobbyists to provide more detailed information on their lobbyist employment and expenditures report by itemizing the name of the legislator, legislative employee, judicial officer and/or employee who is the recipient of any gift, entertainment, recreation, or hospitality in the form of food and beverage. Itemization will not be required when all members of the Legislature, all members of either the House or the Senate or all members of either caucus are invited to an event. New legislation also prohibits any Kansas legislator

or state officer from accepting hospitality in the form of recreation in excess of \$100 per calendar year. Prior to July 1, 2000 there was no limitation on the amount of hospitality in the form of recreation that could be accepted by any legislator or state officer. Senate Substitute for HB 2627 also prohibits all classified and unclassified employees in the executive branch of state government from soliciting or accepting any gifts, free or special discount tickets, or access to entertainment or sporting events or activities such as plays, concerts, games, golf, hunting or other recreational activities because of the employee's official position with some exceptions. In addition, no state employee will be permitted to accept any meals or free or discounted travel from a source outside of state government with some exceptions. In the area of campaign finance, legislators will not be permitted to establish political action committees, and Senate and House recognized party committees will not be permitted to solicit and/or receive contributions during session.

Organization & Operation

The Commission's efforts focus on full compliance with the Kansas campaign finance, conflict of interests, and lobbying statutes. Each year the Commission receives thousands of financial disclosure reports filed by candidates, political and party committees, public officials and lobbyists. Staff time is devoted to assuring the accurate and timely disclosure of required financial information about those in state and local government. The processing and evaluation of filed reports and statements and an analysis of the supporting records, where appropriate, are crucial to the Commission's efforts. It is through the initial and comprehensive review of these reports, and the later audit and investigation when necessary, that the

Commission can determine compliance with the laws.

The Commission's work program encompasses six areas: (1) education and public awareness; (2) advisory opinions; (3) reviews and audits; (4) investigations; (5) enforcement (including the filing of complaints, holding public hearings and assessing civil penalties); and (6) general administrative activities.

Education & Public Awareness

The Commission's goal remains to improve communications regarding the reporting requirements of those subject to one or more of the disclosure laws, and to increase public awareness with respect to the impact and importance of information contained in the reports filed. Information about the Commission, the advisory opinions it issues, campaign finance and lobbying reporting forms, and campaign election statistics can be found on the Commission's web site. Information can be accessed at www.ink.org/public/gsc.

The Commission utilizes informational brochures, the news media, and speaking engagements to inform the public about the laws and their meaning. Statistical information is summarized and printed in the areas of campaign finance and lobbying. However, most time in this area is devoted to informing those directly covered by the laws of their duties and responsibilities. To accomplish this task, the Commission conducts informational seminars, prepares and distributes handouts, campaign finance handbooks, lobbying handbooks, and conflict of interests law brochures. In addition, the telephone is used extensively to provide information and advice.

Advisory Opinions

Advisory opinions are issued by the Commission to clarify the application of the statutes in a particular situation. The Commission can issue these opinions on its own initiative or in response to individual inquiries. If an individual requests an opinion and conducts himself or herself according to the guidelines in the opinion, he or she is presumed to be in compliance with the law.

Sixty-six advisory opinions were issued in FY 2000. Nine of the opinions were issued by the Commission on its own initiative to provide guidance to candidates, office holders and other individuals subject to the Acts. Fifty-seven opinions were issued in response to inquiries by individuals.

FY 2000 Advisory Opinions

Campaign Finance - 12
Lobbying - 2
State Conflict of Interests - 43
Local Conflict of Interests - 8

From its inception in 1974 through June 30, 2000, the Commission has issued a total of 989 advisory opinions. A synopsis of each advisory opinion issued in FY 2000 can be found at the end of this report.

Review & Audit Program

Complete, accurate and timely disclosure of certain kinds of financial information by candidates, elected officials, state employees and lobbyists is the key requirement of the legislation. It has been and is the

Commission's position that active review and auditing of reports is essential for the proper administration of the law.

CAMPAIGN FINANCE

In the area of campaign finance, the Commission's procedures include a preliminary review and post-election comprehensive desk review of all receipts and expenditures reports filed under the Campaign Finance Act. In addition, a certain number of campaigns and committees are selected for field audits.

Candidates and political committees filed a total of 1042 receipts and expenditures reports in FY 2000.

Audits of the records of candidates and political action committees are conducted using generally accepted auditing standards and are conducted on a priority basis. Accorded first priority are situations involving formal complaints. The next priority is assigned to situations in which it is necessary to clarify problems identified during the desk reviews. A general investigation may also be authorized at this point. Finally, a random sample of candidates and committees is audited. If a candidate is selected for a random audit, his or her opponent is also examined. In FY 2000, 13 audits were conducted.

The most prevalent discrepancies discovered during these audits were 1) failure to disclose all monetary contributions received by the campaign or political committee; 2) failure to disclose all expenditures made by the campaign or political committee; 3) the mismanagement of cash; 4) failure to maintain adequate campaign records; 5) failure to report in-kind contributions; and 6) failure to open a campaign bank account.

FY 2000 Campaign Finance Statistics

- Candidates for State Senate - 96
- Candidates for House of Representative - 235
- Candidates for Judge - 126
- Candidates for Retention Judge - 68
- Candidates for District Attorney - 9
- Candidates for State Board of Education - 14
- Candidates for County Office - 1118
- Carryover Senate and House Candidates - 99
- 2000 First Class City Candidates -22
- Carryover County & 1st Class City Candidates - 111
- Political Action Committees - 270
- Party Committees - 192
- Campaign Finance Reports filed - 1042
- Failure to File Notices Issued - 53
- Errors & Omissions Notifications Issued - 76

CONFLICT OF INTERESTS

The Kansas conflict of interests statutes provide for: (1) the filing of statements of substantial interests; (2) a code of conduct making it illegal for state officials and employees to be involved in certain conflicts; and (3) the issuance of advisory opinions.

Each year the Commission's staff processes financial disclosure statements for approximately 6000 state officers and employees. Computer systems are used to

create and maintain lists of state officers and employees subject to the disclosure requirements. Throughout the year, staff updates computer databases as appointments are made, terms end, officials resign, and new positions are created. Financial disclosure forms and instructions are mailed to new appointees and candidates as the Commission receives official notice of their appointment or eligibility. Thereafter, forms and instructions are mailed on an annual basis to all persons subject to filing requirements. All financial disclosure statements are public records and

may be reviewed during regular business hours in the Secretary of State's office.

Those required to file Statements of Substantial Interests are elected state officials and candidates for such office, individuals whose appointments are subject to confirmation by the Senate, general counsels for state agencies and state officers, employees, and members of boards, councils or commissions meeting the definition of a "designee" and so listed by the head of their agency. There were 6190 individuals required to file statements in FY 2000.

The Commission has found that the conflict statutes are not widely understood either by state officers, state employees or the public at large, yet these laws are of fundamental importance to the workings of state government. They draw the line between private interests and public trust which must be guarded carefully. Efforts to clarify and enforce the line are increasingly important as public concern mounts over abuses of the public trust.

2000 Statements of Substantial Interests Filings

- Employees listed as Designees - 5272
- Elected officials - 188
- Candidates for State Office - 219
- Appointees subject to Senate Confirmation - 128
- Board members listed as Designees - 337
- General Counsels - 38
- Executive Directors of Compacts - 8
- Number of Past Due Notices Mailed - 217

Many state officials and employees are in a position to make or influence decisions which could directly affect their personal interests. The state conflict of interests laws prohibit such activity. To assist these individuals, the Commission issues advisory opinions upon its own initiative and upon the request of any person to whom the relevant law applies. In FY 2000, the Commission issued 43 opinions to state officers and employees concerning their positions, personal interests and how the conflict laws applied to them.

REPRESENTATION CASE DISCLOSURE

There were 10 Representation Case Disclosure Statements filed in FY 2000. It is possible that other individuals required to file such statements have not done so. However, given the structure of the statutory requirements, there is no way of knowing who should file such statements.

LOBBYING PROVISIONS

There are 551 lobbyists registered for 2000 as of November 1, 2000, which figure compares with the total of 590 registered lobbyists in 1999. Of the 551 registered, some are registered on behalf of more than one person or organization. To date, 1257 persons or organizations have been represented this year. The Commission's statistical analysis of the lobbyist employment and expenditures reports shows that at least \$468,310 has been spent on lobbying activities to date during 2000. Registered lobbyists are required to file a lobbyist employment and expenditures report six times a year. These reports show expenditures if the lobbyists spent more than \$100 in a reporting period. To date this calendar year, 3977 Lobbyist Employment and Expenditures Reports have been filed. A lobbyist can file an Affidavit of Exemption from filing the Lobbyist Employment and Expenditures Report if he or she does not expend in excess of \$100 per reporting period.

Investigations

In FY 2000, the Commission initiated seven inquiries and four investigations, with three complaints being filed as a result of the inquiries and investigations. In addition to investigations conducted prior to complaints being filed, investigations are conducted following the filing of complaints.

Investigations remain confidential until a complaint has been filed and a probable cause determination has been made regarding the complaint. Whenever an investigation does not disclose facts sufficient to warrant further action, the Commission may issue a report concerning the findings of the Commission to the person or persons investigated. This report can be made public by the person or persons investigated. Due to the confidentiality provisions set by statute, the Commission cannot publicly discuss the investigation or even confirm or deny that any investigation has taken place.

Lobbyist Registrations and Expenditures to date for Calendar Year 2000

- Number of Registered Lobbyists - 551
- Number of Lobbyist Registration Statements Filed - 1257
- Number of Reports Filed by Lobbyists - 3977
- Number of Affidavits of Exemption Filed - 567
- Total Expenditures Reported for the Year - \$468,310
- Number of Past Due Notices Sent - 198
- Number of Failure to File Notices Issued - 179

Enforcement Program

COMPLAINTS

There were 7 complaints filed in FY 2000. Four complaints were filed for campaign finance violations, and all but one of these complaints was dismissed on the basis that there was insufficient evidence to support a probable cause determination. Three complaints were filed for conflict of interest violations. It should be understood that after an investigation, if the Commission concludes that there is no evidence to establish probable cause that there was an intentional violation, a complaint is dismissed and no public hearing is held. Anyone who suspects that any of the provisions administered by the Commission have been violated may file a complaint in writing with the Commission

CIVIL PENALTIES & FINES

The statutes enforced by the Commission provide for the assessment of civil penalties

for failure to file certain reports or statements under the campaign finance, lobbying and state conflict of interests statutes. Individuals can be subject to a \$10 per day penalty for each day the report or statement remains unfiled up to a maximum of \$300. The Commission is authorized to waive any imposed civil penalty, upon a finding of good cause.

In addition to any other penalty prescribed under the campaign finance, lobbying or state conflict of interests statutes, the Commission can assess a civil fine not to exceed \$5000 for the first violation, \$10,000 for the second violation and \$15,000 for the third and each subsequent violation. Before a civil fine can be assessed, the person must be given proper notice and an opportunity to be heard.

There were \$5,150 in civil penalties assessed in FY 2000 against individuals who failed to file their reports in a timely manner. Civil fines assessed in FY 2000 total \$750. A total of \$3,525 in fines and penalties was collected in FY 2000. This total includes receipt of fine money assessed in FY 1999.

FY 2000 Civil Penalties and Fines

- Civil Penalties Assessed
 - Campaign Finance - \$2030
 - Lobbying - \$2200
 - Statements of Substantial Interests - \$920

- Total Civil Penalties Assessed - \$5150
- Total Civil Penalties Waived - \$215
- Total Civil Penalties Collected - \$3275

- Total Civil Fines Assessed - \$750

Conclusion

As the Commission has repeated on a number of occasions, its success or failure will depend on its ability to guarantee the Governor, the Legislature and above all, the people of the State, that individuals subject to the campaign finance, conflict of interests and lobbying provisions are complying with the laws. To a great extent, this means the ability to insure that the financial information reported periodically is timely, accurate and complete. The Commission believes that while the past several years have shown significant improvement in the timeliness of the filings and the quality of the reports submitted, too many still contain errors and/or omissions. Much remains to be done through education and assistance to upgrade the quality of the reports, and at the same time, to identify and proceed against those who intentionally violate the law. In the same vein, much remains to be done to alert the people of their rights and responsibilities under the law. The Commission recognizes that the strongest safeguard against unethical conduct by public officials and employees is an informed and active public.

COMMISSION RECOMMENDATIONS

The Commission is directed by statute to make recommendations to the Governor and Legislature. It recognizes that any major piece of legislation periodically needs revision, modification, and in some cases, major changes. To that end, the Commission makes the following recommendations:

STATE CONFLICT OF INTEREST PROVISIONS

1) Pursuant to K.S.A. 46-229, one of the definitions of "substantial interest" means "If an individual or an individual's spouse, either individually or collectively, has owned within the preceding 12 months a legal or equitable interest exceeding \$5000 or 5% of any business, whichever is less, the individual has a substantial interest in that business". The Commission believes that the \$5,000 threshold for a legal or equitable interest should be raised to \$15,000. The Commission feels that due to inflation, this \$5,000 figure, which has been law since the mid 1980's, should be raised. The consequences of this increase would 1) require individuals required to file Statements of Substantial Interests to list any legal or equitable interest in any business exceeded \$15,000 rather than \$5,000, and 2) Require state officers and employees to abstain from participating in the making of a contract with any person or business by which the officer or employee or any member of the officer or employee's immediate family has a substantial interest in which is over \$15,000.

2) In a Commission advisory opinion, the Commission has opined that The Annual Survey, a publication of the Kansas Bar Association, falls under the gift provisions set forth in K.S.A. 46-271. Therefore, this publication can not be provided to legislators and senior executive branch officers since the cost of the publication is more than \$40. The Commission recommends that the donation of regular and official publications of trade and professional associations be excluded from the definition of gifts, as set forth in K.S.A. 46-271.

3) K.S.A. 46-277 states no action or conduct of any person shall constitute a violation of the ethics law unless the action or conduct was intentionally violative of these laws. The Commission recommends that this statute be amended so that a violation would exist if a state officer or employee in the executive branch knew, or reasonably should have known, that his or her action or conduct was in violation of the ethics laws. Thus, it would be necessary to show that the state officer or employee in the executive branch had a "general intent" rather than a "specific intent" to violate the law. The Commission does not recommend amending this section to include state officers or employees in the legislative branch of State government.

SUMMARY

OF

ADVISORY OPINIONS

ISSUED IN

FY 2000

Opinion No. 1999-23 Issued July 15, 1999

FACTUAL STATEMENT

The Governor's Office questioned whether campaign funds may be donated to a charity after termination of the campaign and prior to the filing of a termination report and if so what restrictions apply.

QUESTION

May campaign funds be donated to a charity?

OPINION

K.S.A. 1998 Supp. 25-4157a, applies to this question. The statute authorizes donations at any time of campaign funds to community service or civic organizations. Contributions may thus be made to charities which are either community service or civic organizations. Further contributions may be made to charitable organizations at the time of the termination of any campaign and prior to the filing of a termination report.

Opinion No. 1999-24 Issued July 15, 1999

FACTUAL STATEMENT

The College Republican National Committee (CRNC) requested that Governor Bill Graves sponsor their upcoming convention as a Gubernatorial Sponsor. CRNC is a youth organization dedicated to political education and activism for the Republican Party. The convention will bring together college students from across the nation with elected officials, presidential hopefuls, and esteemed scholars. Gubernatorial sponsors receive a complimentary registration to the convention for a gubernatorial intern or Kansas college student, as well as complimentary attendance for the Governor at the 1999 Lee Atwater Awards Gala.

QUESTION

May the Governor use campaign funds to sponsor the CRNC Convention?

OPINION

K.S.A. 1998 Supp. 25-4157a, applies to this question. Pursuant to this section, the governor may use campaign funds to sponsor the CRNC Convention if it is a "community service or civic organization." CRNC is a national political organization, and not a "community service" organization. In addition, it is not a "civic" organization and, therefore, the Governor may not use campaign funds to sponsor the CRNC Convention pursuant to this subsection.

Subsection (d), however, allows campaign funds to be contributed to a "party committee" at any time. K.S.A. 25-4143(I) defines "party committee." Because Governor Graves is prohibited from running for re-election, and has thus terminated his campaign, but has not yet filed his

termination report in accordance with K.S.A. 25-4157, he may donate his campaign funds to the CRNC convention, if the CRNC is a "party committee" as defined by K.S.A. 25-4143(I).

Opinion No. 1999-25 Issued August 19, 1999

TO ALL INTERESTED PERSONS

Pursuant to K.S.A. 46-254, the Kansas Governmental Ethics Commission takes the opportunity to issue its opinion as to the definition of niece and nephew pursuant to K.A.R. 19-40-4(b)(1).

OPINION

A question has arisen as to whether a "niece-in-law" or a "nephew-in-law" is a niece or nephew pursuant to K.A.R. 19-40-4(b)(1)(E). The Commission now determines that the natural or adopted children of your sibling or of your spouse's siblings will be considered nieces or nephews pursuant to K.A.R. 19-40-4(b)(1)(E).

Opinion No. 1999-26 Issued August 19, 1999

FACTUAL STATEMENT

A Kansas State Senator was asked to deliver the keynote address at the annual meeting for the American Academy of Pediatrics (AAP) in Washington, D.C. regarding the current status of the Children's Health Insurance Program (CHIP) in the States and the activity of Congress affecting CHIP and Medicaid. She explained that she spent numerous hours interviewing people in other states, reading materials, and communicating with national groups familiar with Congressional efforts in these areas. In addition, she spent a great deal of time on the actual preparation of the speech during the month prior to the presentation. AAP has offered her a \$1,000.00 honorarium which they indicated was a reflection of the amount of time they believed that she spent preparing for this presentation.

QUESTION

Is it permissible for the Senator to accept the \$1,000.00 honorarium for delivering the keynote presentation at the American Academy of Pediatrics annual meeting?

OPINION

Applying the factors outlined in Commission Opinion No. 1997-51 to the information the Senator provided in her opinion request, the Commission believes the monetary limits set out in that opinion should not be waived, for the reason that the statute requires that the Senator's application for a waiver be made prior to her acceptance of the speaking engagement. Thus, she could accept up to \$200.00 for delivering the keynote presentation. In addition, since she is providing a bona fide speaking service at the meeting, AAP could pay for all of her reasonable

expenses.

Opinion No. 1999-27 Issued August 19, 1999

FACTUAL STATEMENT

The attorney for the Kansas Board of Pharmacy (KBP) presented a hypothetical situation in which a board member, who is regularly employed by a large chain drug store, attends a national conference of State Boards' of Pharmacy in his capacity as a KBP Board Member. While attending this conference, the board member is invited to a dinner which is not a part of the conference. The dinner is hosted by an organization made up of chain pharmacies, and only pharmacists from the conference who are employed by chain pharmacies are invited to the dinner. The topics of discussion are issues of interest to chain pharmacies and pharmacists employed by chain pharmacies.

QUESTION

May the KBP Board Member attend and consume the dinner without violating the State level conflict of interest laws?

OPINION

K.S.A. 1998 Supp. 46-237a applies to the governor, the lieutenant governor, the governor's spouse, all classified employees, those unclassified employees in the executive branch whose compensation is subject to approval by the governor pursuant to K.S.A. 75-2935b, and all members of boards, commissions and authorities of the executive branch of state government. Persons subject to this statute are prohibited from accepting any meals from a source outside of state government, unless one of the four enumerated exceptions apply. Under the factual scenario provided, none of the exceptions would apply, therefore, the board member would be prohibited from accepting the meal.

Opinion No. 1999-28 Issued August 19, 1999

FACTUAL STATEMENT

The Leawood City Attorney, on behalf of a City Councilman, explained that the Councilman is the Executive Director of Business for Benchmark Insurance Companies (Benchmark). He is a salaried individual who does not receive additional compensation as a result of business associations with Benchmark clients. The City of Leawood is currently involved in litigation with Super Market Developers, Inc. (SMDI) over a proposed zoning application that was rejected by the City Council prior to this Councilman's election. Both SMDI and Benchmark are wholly owned subsidiaries of Associated Wholesale Grocers of Kansas City (AWG). In addition,

Benchmark provides automobile insurance to SMDI. It should be noted that this Councilman is not involved in the automobile insurance department and has no contact with anyone at SMDI.

In addition, the law firm of Blackwell Sanders represents SMDI in the lawsuit against the City of Leawood. This Councilman's wife is employed by this law firm as an associate attorney. She is not directly involved with the case and will not receive any type of commission or compensation based upon her firm's representation of SMDI. It is possible that a settlement could be reached between SMDI and the City requiring an approval of the settlement by the City Council, or that the City Council, under either court order or its independent decision, could reconsider its prior decision regarding SMDI's zoning request. This Councilman has filed a statement of substantial interests which discloses the nature of his interest in Benchmark, and the nature of his wife's interest in the Blackwell Sanders law firm.

QUESTIONS

- I. May the Councilman participate and vote on issues involving SMDI's zoning request?
- II. May the Councilman participate and vote on matters where his wife's law firm appears before the Council on behalf of its clients with zoning applications?
- III. May the Councilman participate and vote on an approval of a settlement agreement reached between the City and SMDI?

OPINION

This City Council member is governed by the local level conflict of interest laws (K.S.A. 75-4301 *et seq.*). Based upon the information provided, it does not appear that this Councilman has a substantial interest in SMDI. Therefore, he may participate and vote on issues involving SMDI's zoning requests.

With regard to the second question, it is clear that this Councilman has a substantial interest in the Blackwell Sanders law firm by virtue of his wife's position in that firm. The absolute abstention requirement of K.S.A. 75-4304, however, is triggered only in situations where the local governmental officer, in the capacity as a governmental officer, makes or participates in the making of a contract with a person or business by which the officer is employed or in whose business the officer has a substantial interest. This Commission has consistently held that K.S.A. 75-4304 does not generally cover legislative decisions or administrative decisions such as those made by Planning Commissions, Board of Zoning Appeals, or city councils dealing with zoning applications. See Commission Opinion 1999-05, 1998-20 and 1994-38. Thus, K.S.A. 75-4305 is the section that generally applies to the type of situation described. Provided that his wife's compensation is not tied to the outcome of this matter, and his disclosure statement details the nature of his interest in Blackwell Sanders, the law does not preclude this Councilman from participating and voting on zoning applications presented in this matter by his wife's law firm.

Because this Councilman does not have a substantial interest in SMDI, he may also participate

and vote on any settlement agreement reached between the City and SMDI. It should be noted that, although the settlement may be presented by Blackwell Sanders, it will actually be a contract between the City and SMDI, and therefore, no conflict exists for this Councilman.

Finally, the Commission would note that, while this Councilman may legally participate and vote on these matters, the better course of action would be to abstain from voting so as to avoid the appearance of impropriety.

Opinion No. 1999-29 Issued August 19, 1999

TO ALL INTERESTED PERSONS

Pursuant to K.S.A. 46-254, the Kansas Governmental Ethics Commission takes the opportunity to issue its opinion as to whether a consultant fits the definition of "employee, independent contractor or subcontractor" pursuant to K.S.A. 46-233(a)(2).

OPINION

A question has arisen as to whether a consultant is an employee, independent contractor or subcontractor. The Commission now determines that a consultant is either an employee, an independent contractor or a subcontractor for the purposes of K.S.A. 1998 Supp. 46-233(a)(2).

Opinion No. 1999-30 Issued August 19, 1999

FACTUAL STATEMENT

A former EDRII Field Representative for the Kansas Department of Commerce and Housing (KDOCH) explained that, in his previous position with the State, he contacted regional businesses and communities and identified relevant local, state and federal assistance programs that might be of benefit to the company or community. In addition, he provided technical assistance, education and training on various economic development program alternatives. He did not actually complete the paperwork for the company or community, and he had no influence or authority to decide whether they were accepted into the programs. In addition, he was not involved in any contracts with these entities.

After leaving state employment, he is considering establishing a business in which he would provide consultation services to Kansas companies. In this capacity, he would perform an in-depth evaluation to determine if the company is eligible for any local, state, or federal programs, incentives, or grants. He would also provide them with the assistance necessary to follow through with the required paperwork and procedures to secure the benefit.

QUESTION

- I. Is it a violation of the State Governmental Ethics laws for a former EDRII Field Representative to work as a consultant for Kansas companies applying for local, state, or federal programs, incentives, or grants after he leaves state employment?
- II. May this former EDRII Field Representative work as a consultant for organizations with which he had contact while employed by the State?

OPINION

K.S.A. 1998 Supp. 46-233(a) prohibits an individual from accepting employment as an employee, independent contractor, or subcontractor with a business with which the individual contracted in his or her capacity as a state employee for two years after performance of the contract is completed or until two years after he or she terminated state employment, whichever is sooner. In Commission Opinion 1999-29, the Commission determined that a consultant is always an employee, an independent contractor or a subcontractor for the purposes of K.S.A. 1998 Supp. 46-233(a)(2). Therefore, if, in his capacity as a state employee, the EDRII Field Representative participated in the making of a contract with a business, he would be prohibited from providing consulting services to that business until two years after performance of the contract was completed or until two years after he terminated state employment, whichever is sooner. If, in his capacity as a state employee, he was not involved in the making of any contracts with the business, K.S.A. 1998 Supp. 46-233 would not prohibit him from providing consulting services to that business. In addition, pursuant to K.S.A. 46-241, confidential information obtained during his official duties with the state may not be used for his financial gain or the financial gain of another.

With regard to the second question, nothing in K.S.A. 46-215 *et seq.*, prohibits the EDRII Field Representative from performing consulting services for entities he has come into contact with while a state employee, so long as the provisions of K.S.A. 1998 Supp. 46-233(a)(2), noted above, are followed. See Commission Opinion 1994-01.

Opinion No. 1999-31 Issued August 19, 1999

FACTUAL STATEMENT

A Kansas State Representative explained that he is the general/managing partner and the general contractor and co-developer for an organization that wishes to apply for Federal Low Income Housing Tax Credits (LIHTC) administered by the Kansas Department of Commerce and Housing (KDOC&H). In addition, he wishes to apply with the local taxing authorities for property tax abatements through the Neighborhood Revitalization Act (NRA).

QUESTION

May a state representative, acting in his personal business capacity, apply for and receive federal tax credits administered by the KDOC&H and property tax abatements through the NRA?

OPINION

Nothing in K.S.A. 46-215 *et seq.* prohibits the situation described.

Opinion No. 1999-32 Issued August 19, 1999

FACTUAL STATEMENT

A Rehabilitation Counselor II for the Rehabilitation Services Division of the Kansas Department of Social and Rehabilitation Services (SRS) advised that she is attempting to complete her Licensed Special Clinical Social Worker (LSCSW) degree and is currently performing her practicum work at the Transitional Adult Program (TAP) where she performs individual and group therapy and program activities for mentally ill young adults aged 17 to 24. She explained that she is actually employed and paid by the Breakthrough Club which serves mentally ill adults aged 25 to 60 in a separate facility. Her supervisor stated that the Rehabilitation Counselor will not refer any of her SRS clients to TAP or the Breakthrough Club, and the Rehabilitation Counselor will not be involved in the preparation of, nor participate in the making of, any contracts with TAP or the Breakthrough Club.

QUESTIONS

- I. Is it a violation of the State Governmental Ethics laws for the Rehabilitation Counselor to work as a therapist for TAP while employed by SRS?
- II. May the Rehabilitation Counselor, in her capacity as an SRS employee, serve clients who are also clients of the Breakthrough Club?

OPINION

Pursuant to K.S.A. 1998 Supp. 46-233(a), the Rehabilitation Counselor is prohibited, as a state employee, from being substantially involved in the preparation of, or participating in the making of, a contract with the business by which she is employed. Because her supervisor is willing to shield her from any involvement in such contracts with TAP or the Breakthrough Club, her employment with TAP does not violate K.S.A. 1998 Supp. 46-233(a). In addition, so long as it is not part of her current state duties to perform individual and group therapy and program activities for SRS, K.S.A. 1998 Supp. 46-235 would not prohibit her from accepting compensation for performing these services for TAP. Finally, pursuant to K.S.A. 46-241, confidential information obtained during the Rehabilitation Counselor's official duties with the state may not be used for her financial gain or the financial gain of another.

With regard to the second question, nothing in the state level conflict of interest laws (K.S.A. 46-215 *et seq.*) prohibits her, in her capacity as a state employee, from serving clients who are also clients of TAP or the Breakthrough Club.

Opinion No. 1999-33 Issued August 19, 1999

TO ALL INTERESTED PERSONS

Pursuant to K.S.A. 46-254, the Kansas Governmental Ethics Commission takes the opportunity to issue its opinion on the application of K.S.A. 46-233(d)(1) to re-negotiated renewal contracts.

OPINION

It often occurs that an original contract let after a competitive bidding process contains a provision for renewal at a specific point in time. In dealing with such contracts, the question is whether the renewed contract will be considered to be let after competitive bid pursuant to K.S.A. 46-233(d), if any of the material terms are changed. The Commission determines that if the original contract is simply renewed with no material changes, the "renewed" contract will still be considered to have been let after a competitive bid process. If, however, there are material changes which are made to the renewal contract, the renewal contract will be considered to be a negotiated contract and not a contract let after a competitive bid process.

Opinion No. 1999-34 Issued August 19, 1999

FACTUAL STATEMENT

The Child Support Enforcement Program (CSE) of the Kansas Department of Social and Rehabilitation Services (SRS) is working with the Office of Judicial Administration to establish the Kansas Payment Center (KPC). A Procurement Negotiating Committee (the Committee) has been established to select a vendor and negotiate a contract on behalf of the state. This committee consists of the Administrator of CSE; a representative from the Division of Information Services; and a purchasing Officer for the Department of Administration. A Proposal Review Team has been organized to analyze the technical aspects of the submitted proposals. The proposal review team will prepare a report to the Committee and make recommendations as to which proposals are suitable for further negotiations. The review team consists of two CSE employees, and four representatives from OJA.

Some concerns have arisen involving one of the proposals and three current SRS employees. One of the proposals indicates that an SRS employee has been interviewed, qualified, and given a contingent offer of employment, should that particular contractor receive the contract for the KPC. This employee is director of a project to enhance the CSE mainframe computer system. Although she works closely with the CSE program and its staff, she is not within the CSE hierarchy and did not participate in drafting the terms, nor did she furnish information for the request for proposals. In addition, she will not be involved in the award of the contract.

In her current position with SRS, she is responsible for authorizing her staff to prepare Task Proposal Requests to obtain needed services from prospective bidders. The qualified lowest bid

receives the contract.

The SRS employee's husband is the Director of the CSE Field Operations. He is not, however, a part of the Committee or the review team, and he did not participate in drafting the terms, nor did he furnish information for the request for proposals. At the time the requests for proposals were opened, however, he did supervise another employee who is a key person on the review team. SRS took immediate steps to transfer supervision of this employee to the CSE administrator.

Finally, a CSE attorney is a member of the review team. Her role has been to help draft the request for proposal and to participate in analyzing the proposals for the Committee. She is not a member of the actual Committee which will select the successful bidder. One of the KPC proposals lists four companies, otherwise unaffiliated with the bidder, that the bidder has selected as "strategic business partners." When the CSE Attorney reviewed the list of names the bidder furnished, she realized that she has a "substantial interest," as defined by K.S.A. 46-229, in one of the bidder's proposed strategic business partners. Her interest consists entirely of corporate stock valued at more than \$5,000, but far less than 5% of the company.

QUESTIONS

- I. Do either of the SRS employees who are married have a substantial interest, as defined in K.S.A. 46-229, in the bidder's business by virtue of the bidder's contingent offer of employment to the wife?
- II. Have either of them been substantially involved in the preparation of or participated in the making of this contract?
- III. May she accept immediate employment with this bidder if it were to receive the KPC contract?
- IV. Has SRS adequately addressed the need to separate him from the procurement process?
- V. Is it permissible for the CSE Administrator to continue to serve on the Committee while continuing to supervise the husband?
- VI. Does the CSE Attorney's interest in the "strategic business partner" prohibit her from being a member of the review team?

OPINION

Because this contract will be issued pursuant to the advertised competitive bid process, the restrictions listed in K.S.A. 1998 Supp. 46-233(a), do not apply. Therefore, the Commission finds no prohibitions to the scenarios described.

The Commission notes, however, that although the SRS employees may not be prohibited from participating in this contract or accepting employment with this bidder, they may wish to

consider that their actions may have an appearance of impropriety.

Opinion No. 1999-35 Issued September 16, 1999

FACTUAL STATEMENT

A Kansas State Representative informed the Commission that he has been accepted into the Kansas University Economics Institute for Kansas Leaders (the conference) which is being organized by the Robert J. Dole Institute for Public Service and Public Policy and the Law and Organizational Economics Center at the University of Kansas (the Center). The Conference will be a four day event held November 3-7, 1999. The "Facts and Information" sheet provided indicates that the Center will cover the tuition, textbooks and other materials, group meals, and lodging at the Eldridge Hotel in Lawrence, Kansas. This conference is designed to be a "tuition-free leadership education program for Kansas Legislators" and will focus on the "foundations of market-based solutions."

QUESTION

- I. May a state legislator accept the invitation and attend the tuition-free Kansas University Economics Institute for Kansas Leaders without violating State governmental ethics laws?

OPINION

Based upon the facts presented to the Commission, it is clear that the University of Kansas intends to present the members of the Kansas Legislature with an educational opportunity consistent with its public service duties. There has been no evidence presented to the Commission to suggest that the donor has a major purpose of influencing the legislators in the performance of their official duties or prospective official duties. Therefore, the Commission determines that state legislators may accept the invitation and attend the tuition-free Kansas University Economics Institute for Kansas Leaders without violating State governmental ethics laws.

Opinion No. 1999-36 Issued September 16, 1999

FACTUAL STATEMENT

A member of the Board of Directors of the Kansas Conservative Caucus, Inc. (the Caucus) and a State Representative from the 16th District explained that the Caucus was incorporated on August 10, 1999, as a not-for-profit corporation whose purpose is to provide research capability for legislators on issues which are the subject of legislation. The corporation has applied for federal tax exempt status under the Internal Revenue Code Section 501(c)(4). In order to receive tax exempt status under this section, the corporation must be not-for-profit and devoted only to

charitable, educational, or recreational purposes. He explained that membership with voting rights will be limited to members and members-elect of the House of Representatives and the Senate of the State of Kansas.

QUESTION

I. May members and members-elect of the House of Representatives and the Senate use campaign funds to pay membership dues to the Kansas Conservative Caucus, Inc.?

OPINION

Pursuant to K.S.A. 1998 Supp. 25-4157a(a)(2), the members and members-elect of the House of Representatives and the Senate may use campaign funds to pay the membership dues if the membership dues are an expense of holding political office. Because the Legislature has at its disposal the use of Legislative Services for any research its members require, the use of the services provided by the Caucus are not a necessary expense of holding public office. Therefore, the membership dues could not be considered an expense of public office pursuant to subsection (a)(2) of K.S.A. 1998 Supp. 25-4157a.

In addition, pursuant to subsection (a)(4) of K.S.A. 1998 Supp. 25-4157a, the members and members-elect of the House of Representatives and the Senate may use campaign funds to pay the membership dues if the Caucus is a "community service or civic organization." The Caucus is a political organization, and not a "community service" or "civic" organization. Therefore, pursuant to this subsection, the legislators may not use campaign funds to pay the membership dues of the Caucus.

Opinion No. 1999-37 Issued September 16, 1999

FACTUAL STATEMENT

The Attorney for the Kansas Lottery explained that a Lottery employee was a member of a twelve (12) person team that supplied information for a Request for Proposal (RFP) which was issued in July of 1996. A contract was awarded to the successful bidder on April 18, 1997. The employee at issue has now been offered employment by this contractor. The eventual contract at issue was let after a competitive bid procedure pursuant to K.S.A. 74-8705(b).

QUESTION

May this employee of the Kansas Lottery accept employment with this contractor?

OPINION

Because the contract at issue was let pursuant to an advertised competitive bid process, the restrictions listed in K.S.A. 1998 Supp. 46-233(a)(2), do not apply. Therefore, the Commission finds no prohibitions to the scenario described.

Opinion No. 1999-38 Issued September 16, 1999

FACTUAL STATEMENT

The attorney for the Kansas Board of Pharmacy (KBP or the Board) presented the Commission with several hypothetical situations. The basic scenario involves a situation in which a KBP board member, who is regularly employed by a large chain drug store, attends a Pharmacy conference. While attending this conference, the board member is invited to a dinner hosted by an organization made up of chain pharmacies. The topics of discussion are issues of interest to chain pharmacies and pharmacists employed by chain pharmacies.

He described several variations to this scenario:

1. In the first, the board member attends this conference in his capacity as a state board member and all other attendees are members of state boards.
2. In the second, the board member attends in his capacity as a member of the Board, but other attendees are a mix of state board members and private pharmacists.
3. Finally, the board member attends in his capacity as a private pharmacist and the other attendees are a mix of board members and private pharmacists.

For each of these scenarios he added the following variables:

1. The dinner the board member is invited to is provided as part of the convention, but sponsored by a large chain drug store.
2. The dinner is not a part of the convention, but is provided by a large chain drug store and only members of state boards are invited.
3. The dinner is not a part of the convention, but is provided by a large chain drug store and private pharmacists and members of state boards are invited.

QUESTIONS

For each of the scenarios listed above, may the KBP board member attend and consume the dinner without violating the State level conflict of interest laws?

OPINION

K.S.A. 1998 Supp. 46-237a is applicable to these questions. As a general rule, persons subject to this statute are prohibited from accepting free or special discounted meals from a source outside of state government, unless one of the four enumerated exceptions apply. If the dinner, however, is provided as part of the convention, the board member may attend and consume the meal under

any of the scenarios you have provided, so long as the meal is paid for by his registration fee. If, however, the dinner is not provided as part of the convention and therefore not covered by the registration fee, one of the enumerated exceptions to K.S.A. 1998 Supp. 46-237a(c) must apply.

In the situation where the dinner is not provided for by the registration fee and only members of state boards are invited, none of the enumerated exceptions apply. Therefore, the board member may not accept the free meal, regardless of the capacity in which he attends the conference. He may, however, attend the meeting and pay for the cost of the meal.

In the situation where the dinner is not provided for by the registration fee and a combination of private pharmacists and members of state boards are invited, the reason the board member is invited and attending will be a factor. If the board member was invited and is attending in his official capacity as a KBP Board member, he may not accept the free meal. In this situation, although he is attending in his official capacity, the function is not open to the "public." See K.S.A. 1998 Supp. 46-237a(c)(2) and Commission Opinion 97-24. Because he was invited in his official capacity, the board member may not accept the free meal, but again, may pay for the cost of the meal if he chooses to attend the dinner.

If the board member was invited and is attending in his private pharmacist capacity, and some of the other invitees are not members of State Boards, he may accept the free meal, so long as it is obvious that the meal is not being provided because of his official position. See K.S.A. 1998 Supp. 46-237a(c)(3).

It should also be noted that if the board member is invited to attend this meeting, and the foods served are beverages or snack foods which are not served as part of a "meal," pursuant to K.S.A. 1998 Supp. 46-237a(c)(4), the board member may accept the food served without violating the state ethics laws.

Opinion No. 1999-39 Issued September 16, 1999

FACTUAL STATEMENT

Two executive level employees with the Kansas Department of Social and Rehabilitation Services (SRS) explained that in their current positions with the state, managers report directly to them concerning grants and contracts, purchasing and inventory, audit services, and information technology/project management. They further explained that they intend to establish a part-time consulting business while continuing their employment with SRS. Their new business entity will offer consulting, training, and referral services in information technology/project management, business process re-engineering management, accounting/auditing, and elder care.

QUESTION

May state employees operate this private consulting business while still employed by the State

M

without violating any of the State Governmental Ethics laws?

OPINION

Three statutes apply to the question raised: K.S.A. 1998 Supp. 46-233(a), which involves participation in the making of contracts; K.S.A. 1998 Supp. 46-235, which governs restrictions on compensation of state employees; and K.S.A. 46-241, which involves the use of confidential information. Pursuant to K.S.A. 1998 Supp. 46-233(a)(1), they would be prohibited, as state employees, from being substantially involved in the preparation of or participation in the making of a non-competitively bid contract with the business by which they will be employed. Additionally, under subsection (a)(2) they would be prohibited from accepting employment as employees, independent contractors, subcontractors or as consultants with a company, if either of them, as state employees, had participated in the making of any non-competitively bid contract with that company during the preceding two years.

K.S.A. 1998 Supp. 46-235 would not prohibit them from operating this business, so long as it is not part of their current state duties to perform the type of services they plan to offer in their new enterprise.

Finally, pursuant to K.S.A. 46-241, confidential information obtained during their official duties with the state may not be used for their financial gain or the financial gain of another.

Opinion No. 1999-40 Issued September 16, 1999

FACTUAL STATEMENT

The Towanda City Administrator informed the Commission that a Towanda City Council member has been elected as a member of the local U.S.D. 375 school board. In addition, this city council member is employed by U.S.D. 375 as a secretary to one of the school administrators. In the summer of 1998, the City entered into a contract agreement with U.S.D. 375 for a school resource officer. Pursuant to this agreement, the City provides a commissioned officer to the school. The City and U.S.D. 375 are now renegotiating the terms of this contract.

In addition, the City initiated a unilateral annexation process after this member was sworn into office on the school board. One of the four tracts of land presented to the council for annexation consideration contained land owned by U.S.D. 375. This council member participated in the vote concerning annexation of this land.

Finally, the City and U.S.D. 375 have overlapping taxation jurisdictions and, therefore, the City Administrator questions whether this council member may participate in the discussion of and vote on the City's budgets.

QUESTIONS

- I. May the Towanda City Council member participate in the discussion of and vote on the contract between the City and U.S.D. 375 for a resource officer?
- II. May the Towanda City Council member participate in the discussion of and vote on the annexation of land owned by U.S.D. 375?
- III. May the Towanda City Council member participate in the discussion of and vote on the City's budgets?
- IV. May this person legally be elected to both the City Council and the School Board at the same time?

OPINION

K.S.A. 75-4304 prohibits a local official from participating in his or her capacity as a local official in the making of contracts in which that official has a substantial interest. This Commission has consistently held that under the local level conflict of interest laws, a "substantial interest" cannot be held in units of government. Because this person does not have a substantial interest in either the City Council or the School Board, the prohibitions in K.S.A. 75-4304 do not apply. Therefore, there are no statutory restrictions which prohibit this person from voting on contractual issues between the City and the School Board or participating in discussions of, and voting on, the annexation of land owned by U.S.D. 375.

In addition, this Commission has consistently held that K.S.A. 75-4304 does not generally cover legislative decisions or administrative decisions such as those made by Planning Commissions, Boards of Zoning Appeals, or City Councils dealing with legislative matters. (See Commission Opinions 1999-05, 1998-20 and 1994-38.) Therefore, there are no prohibitions against this person voting as a City Council member or as a School Board member on either entity's budget or other legislative matter.

Finally, there is nothing in the local level conflict of interest laws in K.S.A. 75-4301 *et seq.*, which would prohibit this person from legally being elected to both the City Council and the School Board at the same time. It should be noted however, that whether some other statutory system, common law theory or agency rule or regulation applies to this inquiry is not covered by this opinion.

Opinion No. 1999-41 Issued September 16, 1999

FACTUAL STATEMENT

The Towanda City Administrator informed the Commission that the Towanda City Attorney is also serving as the Butler County Attorney. The City of Towanda is located in Butler County, Kansas and the City and the County have recently entered into an agreement for road

improvements. The Towanda City Attorney drew up the agreement as the legal counsel for the County and conferred with the City Administrator. The City Administrator is concerned that there could be future agreements where the City's and County's interests might diverge.

QUESTION

May the Towanda City Attorney act as the attorney for Butler County?

OPINION

The Towanda City Attorney is governed by the local level conflict of interest laws (K.S.A. 75-4301 *et seq.*). The Commission has reviewed those laws and finds nothing that would prohibit the scenario described. The Commission suggests, however, that the City Administrator contact the Attorney General's Office for further guidance as to whether the situation raises ethical concerns for attorneys in general.

Opinion No. 1999-42 Issued September 16, 1999

FACTUAL STATEMENT

The attorney for the Kansas Lottery requested that the Commission reconsider its' decision in Opinion 1998-01. The pertinent facts are that an employee of the Kansas Lottery assisted in the preparation of a request for proposal (RFP) and questioned whether he could then accept employment with the contractor who was awarded the contract pursuant to that RFP. The Lottery's attorney has now provided the Commission with additional information and explained that the contract at issue in Opinion 1998-01 was, in fact, let after a competitive bid process authorized by K.S.A. 74-8705(b). Based upon the new information provided, the Commission has granted the request for reconsideration.

QUESTION

Do the prohibitions contained in K.S.A. 1998 Supp. 46-233(a)(2) apply to this contract?

OPINION

Because the contract at issue was let pursuant to an advertised competitive bid process, the restrictions listed in subsection (a)(2), above, do not apply. Therefore, the employee involved in the RFP would be able to accept employment with the contractor who received the contract.

Opinion No. 1999-43 Issued October 21, 1999

FACTUAL STATEMENT

An Area Engineer with the Kansas Department of Transportation (KDOT) explained that although he is not involved with the purchase of normal office supply items, he recently received

an unsolicited sample of an engraved pen from the Amsterdam Printing & Litho Company of Amsterdam, New York. The stated value of this pen is one-dollar and twenty-nine cents (\$1.29).

QUESTIONS

- I. Pursuant to K.S.A. 1998 Supp. 46-237a, may a state employee accept, on behalf of the State agency, a product sample sent by the company to the employee?
- II. Are the prohibitions in K.S.A. 1998 Supp. 46-237a satisfied if a classified state employee destroys an unsolicited "gift" instead of returning the unsolicited gift to the donor?

OPINION

Pursuant to K.S.A. 75-2935b, state employees are entirely prohibited from accepting gifts unless one of the enumerated exceptions applies. In the specific factual scenario detailed, the classified employee will be accepting the product sample on behalf of the state agency and not for the personal use of the employee. If the sample becomes the property of the State, the classified employee may accept the product sample on behalf of the state agency, so long as the agency does not license, inspect or regulate the company providing the sample. See K.S.A. 1998 Supp. 46-237(c) and Commission Opinion 97-23. The Commission would suggest, however, that in order to avoid the appearance of impropriety, the classified employee forward the product sample and the enclosed sales material to the person in charge of purchasing such items for the agency.

With regard to the second question, K.S.A. 1998 Supp. 46-237a prohibits the *acceptance* of any "gift, economic opportunity, loan, gratuity, special discount or service provided because of such person's official position," unless one of the enumerated exceptions applies. In a situation where a classified employee receives an unsolicited "gift" which does not fit into one of the enumerated exceptions, the employee may either forward the item back to the sender or promptly destroy the item. In either case, the employee, for the employee's protection, should take appropriate measures to document that he or she did not "accept" the gift.

Opinion No. 1999-44 Issued October 21, 1999

FACTUAL STATEMENT

The treasurer for the Kansas Health Care Association Political Action Committee explained that the organization would like to reimburse an entity for lobbying expenditures and other legislative actions.

QUESTION

May a political committee reimburse an entity for lobbying expenses or other legislative actions pursuant to the Campaign Finance Act (K.S.A. 25-4142 *et seq.*)?

OPINION

No provision of the Campaign Finance Act (K.S.A. 25-4142 *et seq.*) places restrictions on how a political committee spends its money.

Opinion No. 1999-45 Issued October 21, 1999

FACTUAL STATEMENT

A Kansas State Representative explained that she is a member of the Board of Directors of the Northeast Kansas Mental Health and Guidance Center (NKMHGC). The NKMHGC receives funding through grants from the Juvenile Justice Authority (JJA) and appropriations from the Kansas Legislature. The Representative does not receive compensation as a member of the Board of Directors. As a State Representative, she serves on the House Public Safety Finance Committee which considers funding for the JJA and makes recommendations to the House Appropriations Committee. In addition, she serves on the House Judiciary Committee which considers the structure and statutory framework for the JJA.

QUESTION

May a State Representative participate in the discussion of, and vote on, matters which may affect an entity for which the Representative serves on the Board of Directors?

OPINION

K.S.A. 1998 Supp. 46-233 is the only section which might apply to the scenario described. This Commission has consistently held that the provisions of K.S.A. 1998 Supp. 46-233 apply to "contracts" and not to general legislative determinations. (See Opinions 75-75, 76-09, 76-11, 78-03.) Therefore the Representative's actions in participating in the discussion of, and voting on, matters which may affect the NKMHGC or the JJA are not prohibited by the State level conflict of interest laws. It should be noted, however, that pursuant to K.S.A. 1998 Supp. 46-233(b), if the Representative has a direct or indirect monetary interest in any contract with the State which is funded in whole or in part by any appropriation passed during a term while she is a

Representative, she must note her interest on her statement of substantial interests form pursuant to K.S.A. 46-239.

Opinion No. 1999-46 Issued November 18, 1999

FACTUAL STATEMENT

The Cowley County Counselor advised that a member of the Cowley County Planning Board (Planning Board) is the brother of one of the Cowley County Commissioners. In addition, another member of the Planning Board is the brother-in-law of another member of the Cowley County Commission (Commission).

QUESTION

Does the current membership of the Cowley County Planning Commission or the Cowley County Commission violate K.S.A. 75-4301 *et seq.*?

OPINION

As Cowley County employees, the members of the Planning Board and the County Commission are governed by the local level conflict of interest laws (K.S.A. 75-4301 *et seq.*). We have reviewed those laws and find nothing that would prohibit the scenario you have described. The Commission would note, however, that an appearance of impropriety may arise under these circumstances.

Opinion No. 1999-47 Issued November 18, 1999

FACTUAL STATEMENT

The Attorney General of the State of Kansas informed the Commission that the Attorney General's office and the Secretary of State's office will be located in the historic Memorial Building once the renovation of the building is complete. The Attorney General and the Secretary of State would like to hold a public rededication ceremony that will educate the public about the history of this beautiful building and its original dedication in 1911. In order to defray the costs of publicizing the celebration, they would like to solicit donations from the individuals and companies that participated in the design and renovation of the building. They have informed us that none of the individuals they intend to solicit from have a special interest in the actions of the Attorney General or Secretary of State's offices.

QUESTION

May the Attorney General and the Secretary of State of Kansas solicit donations for a public rededication ceremony of the Historic Memorial Building?

OPINION

Pursuant to K.S.A. 46-237 and 46-236, an unclassified employee may not solicit from any person known to have a special interest when he or she knows or should know that a major purpose of the donor could be to influence the employee in the performance of his or her official duties. Absent a special interest or a major purpose to influence, the Attorney General and the Secretary of State will be able to solicit for the agency.

Opinion No. 1999-36 (Amended) Issued November 18, 1999

FACTUAL STATEMENT

A member of the Board of Directors of the Kansas Conservative Caucus, Inc. (the Caucus) and a State Representative from the 16th District explained that the Caucus was incorporated on August 10, 1999, as a not-for-profit corporation whose purpose is to provide research capability for legislators on issues which are the subject of legislation. The corporation has applied for federal tax exempt status under the Internal Revenue Code Section 501(c)(4). In order to receive tax exempt status under this section, the corporation must be not-for-profit and devoted only to charitable, educational, or recreational purposes. The Board member informed the Commission that membership with voting rights will be limited to members and members-elect of the House of Representatives and the Senate of the State of Kansas.

QUESTION

May members and members-elect of the House of Representatives and the Senate use campaign funds to pay membership dues to the Kansas Conservative Caucus, Inc.?

OPINION

Based upon the information provided by the Caucus, it is the Commission's understanding that the major purpose of the Caucus is to operate as a non-partisan study and research group for members of and members-elect of the House of Representatives and the Senate. The Commission understands that some legislators may choose to belong to the Caucus for the benefit of having the research and information provided by the Caucus. With that in mind, the Commission concludes that the members of and members-elect of the House of Representatives and the Senate may use campaign funds to pay the membership dues of the Caucus, so long as the purpose of the organization is to provide research and information to the legislators. Under these circumstances, the Commission concludes that the membership dues would be an expense of holding political office pursuant to K.S.A. 1998 Supp. 25-4157a(a)(2).

Opinion No. 1999-48 - Issued December 16, 1999

FACTUAL STATEMENT

The former General Counsel for the Kansas Bar Association advised that numerous computer websites are appearing which offer political viewpoints and which urge people to "contact their legislators" about specific legislation or legislative ideas.

QUESTIONS

- I. If a website offers political viewpoints and urges people to "contact their legislators" about specific legislation or legislative ideas, does that constitute lobbying?
- II. If an individual spends more than \$100 per year maintaining a website which supports or opposes an identifiable legislative issue in the Kansas Legislature, must that person register as a lobbyist?
- III. If such a site is maintained by a corporation or other business entity, who must register as a lobbyist if one is required?

OPINION

Pursuant to K.S.A. 46-225 and K.A.R. 19-61-1, if a website through specific communications promotes or opposes action or nonaction by the Legislature it will constitute lobbying.

With respect to the second question, pursuant to K.S.A. 46-222(a) and K.A.R. 19-60-3(c), if the expenses of maintaining the portion of the website which relate to promoting or opposing action or nonaction by the Legislature combined with the cost of any other lobbying expenses by the individual who owns or is responsible for the website meets or exceeds \$100.00 in value, that individual must register as a lobbyist.

In response to the third question, pursuant to K.S.A. 46-223 if the website is owned or operated by a corporation or other business entity, and that entity spends \$100.00 or more in a calendar year on lobbying, it will be necessary for the entity to appoint an individual to register as its lobbyist. That individual will then report all lobbying expenditures on behalf of the entity.

Opinion No. 1999-49 - Issued December 16, 1999

TO ALL INTERESTED PERSONS

The Kansas Governmental Ethics Commission takes the opportunity to issue guidelines with respect to the filing of opinion requests pursuant to K.S.A. 46-254.

The Kansas Governmental Ethics Commission generally holds monthly Commission meetings on the third Thursday of each month. Due to the need to research and prepare answers to the questions presented, as well as to allow Commission members sufficient time to review opinion drafts, the Commission now establishes that opinion requests should be received in the Commission's office no later than 10 days prior to the Commission's next regularly scheduled

meeting.

Persons with extenuating circumstances may petition the Commission in writing or via telephone requesting an earlier date for consideration of an opinion request.

Opinion No. 1999-50 - Issued December 16, 1999

TO ALL INTERESTED PERSONS

Pursuant to K.S.A. 46-254, the Kansas Governmental Ethics Commission takes the opportunity to issue its opinion on the interpretation of K.S.A. 46-237a(b) and (e) and the definition of "official position."

OPINION

The Commission now determines that the term "official position" in K.S.A. 46-237a(b) and (e), refers to an individual's particular position with the State and does not apply generally to a person because they are a State employee. For guidance, the Commission notes that a gift or discount which is provided to all State employees is not being provided to a person because of his or her "official position." On the other hand, a gift or discount which is provided to all purchasing agents, for example, or all employees of a particular agency, will be deemed to be provided because of such persons' "official position."

Opinion No. 1999-51 - Issued December 16, 1999

FACTUAL STATEMENT

The city attorney for the City of Shawnee, Kansas informed us that a member of the Shawnee City Council is also employed by Deffenbaugh Industries, Inc. (Deffenbaugh) which provides routine trash and solid waste disposal services to the City of Shawnee. Although the City Council is not involved in the preparation of the actual contract between the City and Deffenbaugh, the City Council is required to vote on the semi-monthly appropriation ordinances which include payments to Deffenbaugh, as well as payments to the individual members of the City Council.

QUESTIONS

- I. May a member of the city council vote on an appropriation ordinance which contains payments to an entity in which that member has a substantial interest?

OPINION

This City Council member, in his capacity as a Shawnee City Council member, is governed by the local level conflict of interest laws (K.S.A. 75-4301 *et seq.*). K.S.A. 75-4304 prohibits a local official from participating in his capacity as a local official in the making of contracts in which that official has a substantial interest. The absolute abstention requirement of K.S.A. 75-4304 is triggered only in situations where the local governmental officer, in the capacity as a governmental officer, makes or participates in the making of a *contract* with a person or business by which the officer is employed or in whose business the officer has a substantial interest.

Because the approval of the appropriation ordinances are legislative in nature and do not involve the "making of a contract," K.S.A. 75-4304 does not prohibit this Council member from voting on the appropriation ordinances containing payments to Deffenbaugh. We would note that while this City Council member is not prohibited from voting on these issues, the better course of action would be to abstain from voting to avoid the appearance of impropriety.

K.S.A. 75-4305, however, requires disclosure of actions other than contracts which affect a local government official's private business interests. Therefore, before voting on the appropriation ordinances containing payments to Deffenbaugh, this Council member must file a statement of substantial interests form which discloses the nature of his interest in Deffenbaugh.

Opinion No. 1999-52 - Issued December 16, 1999

FACTUAL STATEMENT

The Secretary of the Kansas Department on Aging (KDOA) explained that her agency will be participating in the Governor's Conference on Aging (the Conference) in June of 2000. In order to defray the costs of the conference, the agency would like to solicit exhibitors and sponsors. Anyone attending the conference will be required to pay a \$45.00 registration fee for one day or an \$85.00 registration fee for both days. The agency will be mailing conference registration forms to a wide variety of persons and entities listed on a master data list. This list includes all of the eleven Area Agencies on Aging, various community mental health centers, hospitals, home health agencies, nursing homes, and other entities which may ultimately receive financial support from federal or state governments or from the KDOA.

QUESTIONS

- I. May KDOA *unclassified* employees, on behalf of the agency, mail blank conference registration forms to persons and entities on the master data list?
- II. May the KDOA accept registration fees from any person who wishes to attend the conference, regardless of the registrant's employment status?
- III. May *unclassified* KDOA employees, on behalf of the agency, solicit and accept sponsorship money in excess of \$40 from sponsors who do *not* have a special interest in KDOA?
- IV. May *unclassified* KDOA employees, on behalf of the agency, solicit and accept money for exhibit booths?

OPINION

In answer to the first question, there are no statutes in the State level governmental ethics laws (K.S.A. 46-215 *et seq.*) which would prohibit the agency from sending blank conference

registration forms to persons and entities on the master data list.

The remainder of the questions presented ask about the ability of unclassified employees to accept and solicit on behalf of the agency. K.S.A. 46-236 and K.S.A. 1998 Supp. 46-237 apply to this issue. In answer to the second question presented, so long as all similarly situated participants to the conference are charged the same registration fee, KDOA may accept registration fees from any person who wishes to attend the conference, regardless of the registrant's employment status, because the registration fee is not an "economic opportunity, gift, loan, gratuity, special discount, favor, hospitality, or service."

With regard to the third question presented, pursuant to K.S.A. 46-236 and K.S.A. 1998 Supp. 46-237, unclassified KDOA employees may solicit and accept sponsorship money in excess of \$40 from sponsors who do *not* have a special interest in the KDOA and who are not licensed, inspected or regulated by the KDOA. These employees would be prohibited however, from soliciting sponsorship money in excess of \$40 from entities that do have a special interest in the KDOA or who are licensed, inspected or regulated by the KDOA.

Finally, pursuant to K.S.A. 46-236 and K.S.A. 1998 Supp. 46-237, so long as all participants to the conference are charged the same exhibitor fee for the same size exhibit space, KDOA may solicit and accept money for exhibit booths, because the exhibitor fee is not an "economic opportunity, gift, loan, gratuity, special discount, favor, hospitality, or service."

Opinion No. 2000-01 Issued February 17, 2000

FACTUAL STATEMENT

The President of the United Methodist Health Ministry Fund (Fund) explained that the Fund is a public charity which is exempt from federal income tax under Section 501(c)(3) of the United States tax code. The Fund was established in 1987 as a grant-making organization to provide financial support through grants and other activities for a broad range of health programming throughout Kansas. The Fund does not lobby nor does it have a special interest, as defined in K.S.A. 46-228, in the Legislature or any agency of the State of Kansas.

In October of 1998, the Fund launched *Healthy Teeth for Kansas*, a statewide campaign to improve the oral health of Kansans. As a part of this initiative, the Fund has set aside \$56,500 to provide funds for approximately 40 Kansans to attend a conference in Washington, D.C. (Conference). The Conference is being sponsored by the Surgeon General of the United States and is designed to "bring attention to the impact of oral health on children's overall health and well-being, [*sic*] and to promote action steps to eliminate disparities in children's oral health."

The Fund wishes to provide the following items to these Kansans:

- | | |
|--|--|
| 1. The registration fees for the Conference | \$175 (if made prior to April 1, 2000)
\$225 (if made after March 31, 2000) |
| 2. Airfare (coach) to and from the Conference | (Wichita or K.C. to Washington, D.C.) |
| 3. Hotel expenses | \$169/night |
| 4. Cash per diem
(Per diem covers reimbursement for transportation
to and from airport, ground transportation in D.C.,
meals not provided at the Conference, gratuities
and miscellaneous expenses.) | \$50/day up to four days |

In addition, the Fund would like to provide a special meal during the Conference open to all Kansans attending the Conference, whether or not they are receiving assistance from the Fund. Between 25 and 40 people from all walks of life are expected to attend this dinner. Finally, the Fund will host a hospitality room which will provide snack foods and non-alcoholic beverages during the Conference.

QUESTIONS

- I. May the Fund underwrite the expenses associated with attendance at the D.C. Conference for State employees subject to the State level governmental ethics laws found in K.S.A. 46-215 *et seq.*?
2. May the Fund provide a special meal during the Conference which is open to all Kansans attending the Conference?
3. May the Fund provide a hospitality room which has available snack foods and non-alcoholic beverages?

OPINION

K.S.A. 1998 Supp. 46-237 applies to *unclassified* employees not subject to the provisions of K.S.A. 1998 Supp. 46-237a and to all legislators. K.S.A. 46-228 defines "special interest." Three elements must be shown before the prohibitions in these sections apply. First, the value of the gift must be \$40.00 or greater. Second, the person giving the gift must have a special interest in the person accepting the gift. Finally, the person accepting the gift must know or should have known that a major purpose of the donor was to influence such person in the performance of their official duties or prospective official duties. If any element is not met, the restrictions in the statute do not apply.

The Fund has no interest in the Legislature or an agency of the state and there has been no evidence presented to the Commission to suggest that the Fund has a major purpose of influencing the legislators or state employees in the performance of their official duties or prospective official duties. Therefore, the Commission determines that the Fund may underwrite all of the costs listed above for state legislators and unclassified employees whose salaries are not subject to the approval of the Governor to travel to Washington, D.C. and attend the Conference

without violating State governmental ethics laws.

Next, we must address K.S.A. 1998 Supp 46-237a which applies to the Governor; the Lieutenant Governor; the Governor's spouse; all classified employees; all members of boards, commissions and authorities of the executive branch of state government; and those unclassified employees in the executive branch whose compensation is subject to approval by the governor pursuant to K.S.A. 75-2935b. Pursuant to K.S.A. 1998 Supp. 46-237a, classified state employees are entirely prohibited from accepting gifts, meals, and travel provided because of their official position, unless one of the four enumerated exceptions applies.

With respect to the airfare, lodging, and transportation costs to and from the airport, K.S.A. 1998 Supp. 46-237a(d) would apply. Only if the classified state employee's presence at the Conference serves a legitimate state purpose, and that employee's agency authorizes or would authorize payment for such travel and expenses, may the classified employee accept the airfare, lodging, and transportation costs to and from the airport.

With respect to the portion of the per diem intended to cover the regular meals not provided at the Conference, K.S.A. 1998 Supp. 46-237a(c) would apply. Based upon the information provided, it does not appear that any of the exceptions would apply to the regular meals not provided as a part of the conference. Therefore, the classified state employees would be prohibited from accepting reimbursement for such meals.

The "special meal" the Fund wishes to provide to all Kansans attending the Conference is also governed by K.S.A. 1998 Supp. 46-237a(c). Based upon the information provided, this meal will be attended by 25 to 40 people from all walks of life. Because this meal will not be provided as a pretext for exclusive or nearly exclusive access to the state employees, it meets the definition of a "widely attended" meal and may be accepted by the classified state employees.

In addition, the provision of a hospitality room is also covered by this section. K.S.A. 1998 Supp. 46-237a(c)(4) allows classified state employees to accept snack foods and beverages. Therefore, the classified state employees may frequent the hospitality room and consume the snack foods and beverages.

With respect to the registration fee for the Conference and the portion of the per diem intended to cover ground transportation in D.C., K.S.A. 1998 Supp. 46-237a(b)(3) applies. In Opinion number 1997-47, this Commission interpreted subsection (b)(3) and determined that "items received on behalf of the state must benefit the state as a whole rather than any one individual or agency." Because the state employees invited to this Conference will be gaining valuable information about the health and well-being of children and will be able to share this information with their agencies in order to benefit all the children of Kansas, the registration fee will benefit the state as a whole, and, thus, may be accepted by the classified employees. The classified employees would not be able to accept reimbursement for ground transportation, however.

Opinion No. 2000-02 Issued February 17, 2000

FACTUAL STATEMENT

The Assistant Superintendent of the Emporia Unified School District #253 and the Treasurer of the School District's Recreation Commission (Commission) explained that the Commission serves as the governing body for the local recreational facilities. In order to promote attendance by the Commissioners at the activities they govern and to facilitate associations between the Commissioners and the users of the recreational facilities, the Commission is considering a resolution that would provide Commission members free access to local recreational facilities.

QUESTION

May the Commission provide its members free access to local recreational facilities?

OPINION

The Commission Members are governed by the local level conflict of interest laws (K.S.A. 75-4301 *et seq.*). K.S.A. 75-4304 prohibits a local official from participating in his capacity as a local official in the making of contracts in which that official has a substantial interest. The absolute abstention requirement of K.S.A. 75-4304 is triggered only in situations where the local governmental officer, in the capacity as a governmental officer, makes or participates in the making of a *contract* with a person or business by which the officer is employed or in whose business the officer has a substantial interest. This Commission has consistently held that K.S.A. 75-4304 does not generally cover legislative decisions or administrative decisions such as those made by planning commissions, boards of zoning appeals, or city councils. (See Commission Opinion 1999-05, 1998-20 and 1994-38.) Because the approval of the resolution providing the free access is legislative in nature and does not involve the "making of a contract," K.S.A. 75-4304 does not prohibit the Commission from passing a resolution to provide the Commission members with free access to local recreational facilities.

Opinion No. 2000-03 Issued February 17, 2000

FACTUAL STATEMENT

The Sheriff of Shawnee County informed us that the attorney General has brought a civil ouster proceeding against him in an effort to remove him from office. He incurred legal expenses in the defense of this procedure.

QUESTION

May the Sheriff use campaign funds to defray the legal expenses incurred in defending against a civil ouster proceeding?

BB

OPINION

K.S.A. 1998 Supp. 25-4157a(a), is applicable to this question. The issue is whether the expenses described are being used for the purpose "of holding political office." The Commission has held in the past that campaign funds may be used to defray the legal costs associated with the defense of a candidate's candidacy or election, the demand for campaign related documents in a civil action not involving any wrong doing on the candidate's part, and the defense of a recall petition. See GEC Opinion 1979-6, 1998-35 and 1999-13.

In the particular factual scenario described, the Sheriff will be required to seek legal assistance in order to defend his elected position in a civil proceeding. This is not a criminal trial, but a civil proceeding brought to remove him from office. Under these circumstances, the legal expenses contemplated have a direct connection to the holding of public office and, therefore, he may use campaign funds to pay for the legal fees he will incur. The Commission cautions, however, that he may not use campaign funds in the defense of any criminal proceeding which may be brought against him. See GEC Opinion 1994-19.

Opinion No. 2000-04 Issued February 17, 2000

FACTUAL STATEMENT

The attorney for the Southeast Kansas Area Agency on Aging, Inc. (SEKAAA), which is a non-profit Kansas corporation, informed us that SEKAAA's executive director has expressed an interest in running for the Kansas House of Representatives. He also informed us that SEKAAA's employees are not state employees as defined by K.S.A. 46-221.

QUESTIONS

1. May SEKAAA's executive director become a candidate and run for the Kansas House of Representatives while maintaining his position as executive director of SEKAAA?
2. If the executive director is elected to office, may he retain his position with SEKAAA?

OPINION

With respect to the first question, there are no laws under this Commission's jurisdiction which would prohibit a person, who is not a state employee, from running for elective office.

With respect to the second question, if this individual is elected as a state representative, he will be governed by the state level governmental ethics laws found in K.S.A. 46-215 *et seq.* A thorough review of those laws reveals that there are no prohibitions on a state representative holding a position as executive director of a corporation.

Opinion No. 2000-05 Issued February 17, 2000

FACTUAL STATEMENT

The Chief Nurse at the Beloit Juvenile Correctional Facility explained that every year at Christmas time, the local drug store provides a poinsettia to the nursing staff, all of whom are classified state employees. Although the Beloit Juvenile Correctional Facility purchases its medications from this drug store, the agency does not license, regulate or inspect this drug store.

The poinsettia is traditionally placed on a table at the end of the hall outside of her office during the holiday season and then donated to the horticulture therapy department after the first of the year. This hall is frequented by the nursing staff, the visiting doctors, the residents who use the facilities and numerous other personnel. As chief nurse, she has accepted this poinsettia on behalf of the nursing staff and written a thank you note to the drug store.

QUESTION

May the chief nurse accept this poinsettia on behalf of the nursing staff and keep it in this public hallway?

OPINION

K.S.A. 1998 Supp. 46-237a applies to this question. In the situation described, the drug store provided a gift to the office and not to an individual. The gift became the property of the agency. Therefore, pursuant to K.S.A. 1998 Supp. 46-237a(b)(3), the chief nurse was permitted to accept the poinsettia on behalf of the agency. Although the statute places no restrictions on where such a gift is kept, the Commission notes that the placement of the gift in a hallway used by all of the staff instead of in a private office was appropriate to avoid the appearance of impropriety.

Opinion No. 2000-06 Issued March 16, 2000

FACTUAL STATEMENT

The Secretary of the Kansas Department on Aging (KDOA) explained that her agency is conducting the Governor's Conference on Aging Services (the Conference) on June 13-14, 2000. The Secretary would like to provide the Governor, the Governor's cabinet members, and all members of the Legislature free registration to the Conference.

QUESTION

May the KDOA provide the Governor, the Governor's cabinet members, and all members of the Legislature free registration to the Governor's Conference on Aging Services?

OPINION

With respect to providing all members of the Kansas Legislature free access to the Conference, K.S.A. 1999 Supp. 46-237 applies. Pursuant to this statute, the Commission has consistently

held that gifts given to legislators carry a rebuttable presumption that they are given to influence official action. See Opinions 1977-19, 1991-16, 1991-21, 1991-23, 1992-35, and 1998-02. After careful consideration of the Conference topics and the other information presented, and recognizing the clear public service nature of this Conference, the Commission finds that the KDOA has presented evidence sufficient to rebut the presumption. Therefore, the Commission determines that the KDOA may provide all members of the Legislature free registration to the Conference without violating state governmental ethics laws.

Next, the Commission must address K.S.A. 1999 Supp. 46-237a(b)(3). In Opinion number 1997-47, this Commission determined that "items received on behalf of the state must benefit the state as a whole rather than any one individual or agency." Because the Governor and the Cabinet members will be gaining valuable information about the health and well-being of Kansas elders and will be able to use this information in order to benefit all the seniors in Kansas when formulating public policy, the registration fee will benefit the state as a whole, and, thus, may be accepted by the Governor and the Cabinet members.

Opinion No. 2000-07 Issued March 16, 2000

FACTUAL STATEMENT

The City Attorney for the City of Great Bend, Kansas explained that a Great Bend City Council member became aware of a personnel problem in the City's Park Department involving her niece and brought the matter to the attention of the City Administrator. The Assistant City Administrator investigated the matter and instituted disciplinary action. The City Administrator upheld the disciplinary action, and the City Council must now determine whether the decision of the City Administrator was arbitrary, capricious or unreasonable.

QUESTION

May the Council member participate in and vote on the outcome of the hearing?

OPINION

The Council members are governed by the local level conflict of interest laws (K.S.A. 75-4301 *et seq.*). K.S.A. 75-4304 prohibits a local official from participating in her capacity as a local official in the making of contracts in which that official has a substantial interest. Because the participation in and voting on this hearing does not involve the "making of a contract," K.S.A. 75-4304 does not prohibit the Council member from taking part in the hearing.

Opinion No. 2000-08 Issued March 16, 2000

TO ALL INTERESTED PERSONS

EE

Pursuant to K.S.A. 25-4159, the Kansas Governmental Ethics Commission takes the opportunity to issue its opinion clarifying the terms "brochure, flier or other political fact sheet" contained in K.S.A. 25-4156(C).

OPINION

Pursuant to K.S.A. 25-4156(C), the Commission determines that the terms "brochure, flier or other political fact sheet" does not refer to business cards, yard signs, billboards, bumper stickers, envelopes, t-shirts, pens, pencils, rulers, magnets, or other trinket items. The Commission notes that a fund-raiser invitation, "push" card, brochure or flier which does not expressly advocate the nomination, election or defeat of a clearly identified candidate is not required to contain the name of the chairperson or treasurer of the organization sponsoring the item.

The following items will be considered a "brochure, flier or other political fact sheet": traditional brochures, fliers, or mailers, "push" cards, door hangers, windshield fliers, post cards, and fund-raiser invitations which expressly advocate the nomination, election or defeat of a clearly identified candidate.

Opinion No. 2000-09 Issued March 16, 2000

FACTUAL STATEMENT

The Deputy Director of the Kansas Department of Revenue's Division of Property Valuation explained that a member of her staff, who is employed to perform appraisals for tax purposes, has questioned whether he may perform a market value appraisal of agricultural land during his non-working hours. The Deputy Director explained that, although this employee generally does not perform appraisals for the state on agricultural land, if he were to do so, it would be done for tax purposes and would be based upon the use value of the land. In contrast, the market value appraisal in question will be premised on the amount a willing buyer would be willing to pay and the amount a willing seller would be willing to accept.

QUESTION

Is it a violation of the State Governmental Ethics laws for this employee to perform a market value appraisal of agricultural land during his non-working hours?

OPINION

Two statutes apply to the question raised: K.S.A. 46-235, which governs restrictions on compensation of state employees, and K.S.A. 46-241 which involves the use of confidential information. Pursuant to K.S.A. 46-235, so long as it is not part of this employee's current state duties to perform market value appraisals of agricultural land, K.S.A. 46-235 would not prohibit him from accepting compensation for such an appraisal. Pursuant to K.S.A. 46-241, confidential information obtained during this employee's official duties with the state may not be used for his financial gain or the financial gain of another. Therefore, this employee may perform the market

value appraisal in question without violating state governmental ethics laws, provided he does not use any confidential information obtained during his official duties.

Opinion No. 2000-10 Issued March 16, 2000

FACTUAL STATEMENT

The Executive Director of the Kansas Board of Cosmetology explained that Virgo Publishing, Inc., the National Tanning Training Institute (NTTI) and the North American Alliance of Tanning Salon Owners (TSO) are sponsoring the first annual Indoor Tanning Salon Regulatory Conference to be held at the Buttes Resort in Phoenix, Arizona on March 30, 2000 through April 2, 2000. Virgo Publishing, Inc., the publisher of Looking Fit magazine, will assume the full cost of the conference for two state employees to attend this conference. This will include transportation to and from the airport, air fare, hotel accommodations and all meals during the conference. The proportional cost of the meals and expenses for this conference will be between \$120 and \$125 per person.

QUESTION

May Virgo Publishing, Inc. underwrite the expenses associated with attendance at the Conference for State employees subject to the State level governmental ethics laws found in K.S.A. 46-215 *et seq.*?

OPINION

Pursuant to K.S.A. 46-237a, these employees would be entirely prohibited from accepting gifts, meals, and travel provided because of their official position, unless one of the enumerated exceptions applies. Pursuant to subsection (d), only if the state employee's presence at the Conference serves a legitimate state purpose, and the Board of Cosmetology authorizes or would authorize payment for the travel and expenses, may the employee accept the airfare, lodging, and transportation costs to and from the airport.

With respect to the registration fee for the Conference, subsection (b) applies. In Opinion number 1997-47, this Commission interpreted subsection (b)(3) and determined that "items received on behalf of the state must benefit the state as a whole rather than any one individual or agency." Because the state employees attending this Conference will be gaining valuable information about the health and well-being of indoor tanning patrons and will be able to share this information with the regulatory board in order to benefit all the indoor tanning patrons of Kansas, the registration fee will benefit the state as a whole, and, thus, may be accepted by these employees.

Opinion No. 2000-11 Issued March 16, 2000

GG

FACTUAL STATEMENT

The Human Resources Director for the Kansas Department on Aging (KDOA) explained that the Outreach Services Director has recently completed her Masters of Sciences Degree in the area of Mental Health Counseling. She is now attempting to complete a specified number of hours in clinical and administration counseling in order to become licensed by the Behavioral Sciences Regulatory Board. In this regard, she would like to accept part-time employment at Parkview Passages training staff on such issues as medication interactions, DSM IV, and training staff about developmental issues of young people ages 13 to 17.

In her position as Outreach Services Director, this employee is responsible for developing educational outreach and partnerships in the areas of mental health for the elderly. We have been informed that it is not part of this employee's current state duties to perform the type of work she proposes to perform for Parkview.

QUESTION

Is it a violation of the State Governmental Ethics laws for this state employee to work for Parkview as a clinical and administrative counselor?

OPINION

Three statutes apply to the question raised: K.S.A. 1999 Supp. 46-233(a), which involves participation in the making of contracts; K.S.A. 46-235, which governs restrictions on compensation of state employees; and K.S.A. 46-241 which involves the use of confidential information.

Pursuant to K.S.A. 1999 Supp. 46-233, this employee would not be permitted, in her capacity as a state employee, to participate in the making of a contract with Parkview. Absent such participation in the making of a contract, this statute would not prohibit her from accepting employment with Parkview.

Pursuant to K.S.A. 1999 Supp. 46-235, so long as it is not part of her current state duties to perform clinical and administration counseling for juveniles, she would not be prohibited from accepting compensation for performing these services for Parkview.

Finally, pursuant to K.S.A. 46-241, confidential information obtained during her official duties with the State may not be used for her financial gain or the financial gain of another.

Opinion No. 2000-12 Issued March 16, 2000

FACTUAL STATEMENT

A member of the Jefferson County Democratic Central Committee (Central Committee) and the Jefferson County Volunteers (Volunteers) explained that the Volunteers are hosting the annual

HH

Jefferson County Kansas Day Gala (Gala). Although this event is sponsored by the Volunteers, the planning and execution is done by the Central Committee. The Central Committee's checking account is used and the Central Committee absorbs any profit or loss.

An incumbent Senator has been designated as this year's guest of honor. Typically, the guest of honor is provided a gift of appreciation valued between \$40 and \$50. This year, a local artist has donated an original water color painting to the Central Committee, and the Central Committee has proposed to present this piece to the Senator. The artist has set the value of the painting between \$75 and \$125. We have been informed that neither the Central Committee nor the artist have a special interest in the Legislature as defined by K.S.A. 46-228.

QUESTION

May the Central Committee provide a Kansas State Senator, as the guest of honor for the Gala, with this water color painting as a gift of appreciation for his extended service to Jefferson County?

OPINION

Pursuant to K.S.A. 46-237, three elements must be shown before the prohibitions in this section apply. First, the value of the gift must be \$40.00 or greater. Second, the person giving the gift must have a special interest in the person accepting the gift. Finally, the person accepting the gift must know or should have known that a major purpose of the donor was to influence such person in the performance of their official duties or prospective official duties. If any element is not met, the restrictions in the statute do not apply.

The Central Committee explained that it does not have a special interest in the Legislature or the members of the Legislature. In addition, there has been no evidence presented to the Commission to suggest that the Central Committee has a major purpose of influencing this legislator in the performance of his official duties or prospective official duties. Therefore, the Commission determines that the Central Committee may present the Senator with this water color painting as a gift of appreciation for his extended service to Jefferson County.

Opinion No. 2000-13 Issued April 20, 2000

FACTUAL STATEMENT

An Environmental Scientist for the Bureau of Air and Radiation in the Kansas Department of Health and Environment (KDHE) explained that he has been invited to join the board of directors of the Kansas Natural Resources Council (KNRC) which is a private tax exempt corporation. He also informed us that neither he nor his office contract with the KNRC and that the KNRC is not licenced, regulated, or inspected by the KDHE. In addition, he will serve on the board of directors without compensation.

QUESTION

May an Environmental Scientist for the Bureau of Air and Radiation accept a position on the board of directors of the Kansas Natural Resources Council?

OPINION

Because neither the scientist nor his office contracts with the KNRC and because he will not receive compensation for serving on the board, only K.S.A. 46-241 will apply to this situation. Pursuant to this statute, confidential information obtained during his official duties with the state may not be used for his financial gain or the financial gain of another. Based on the information provided, and with the prohibitions of this statute in mind, there is nothing in the state level conflict of interest laws which would prohibit him from accepting a position on the board of directors of the KNRC.

Opinion No. 2000-14 Issued April 13, 2000

FACTUAL STATEMENT

A Field Maintenance Engineer for the Kansas Department of Transportation (KDOT) explained that KDOT will be hosting the 2nd Annual Winter Training Expo, and that the event will be attended by all levels of KDOT maintenance employees as well as city and county employees who are members of the American Public Works Association. All attendees will pay a registration fee.

QUESTIONS

- I May classified state employees accept inconsequential items such as pens, mouse pads, key chains and coffee cups that are passed out at trade shows from vendors?
3. Are gifts received from a vendor at a booth exhibit at an event where a registration fee is charged the same as receiving items in a "registration packet"?

OPINION

The acceptance of gifts is covered by K.S.A. 46-237(b). Pursuant to this statute, the issue is

whether the inconsequential item provided from a vendor at the trade show is being given to the employee because of his or her position. Based upon the language of the statute and Opinion No. 1999-50 and 1997-20, the Commission determines that classified state employees may accept inconsequential items handed out at exhibit booths at conferences they attend, so long as the exhibit booths and the gifts given are open and available to all state employees, to the general public, or to a significant mix of people from different organizations so that the vendor could not know that the person was a state employee in a position to benefit the vendor.

In response to the second question, a state employee may not accept gifts from a vendor at an exhibit hall simply because he or she has paid a registration fee to the conference.

Opinion No. 2000-15 Issued April 20, 2000

FACTUAL STATEMENT

The Executive Director of the Kansas Real Estate Appraisal Board (Board) explained that the Board has the statutory authority to approve or disapprove pre-licensing and continuing education courses and course instructors. The members of the Board have the ability to vote on these matters, but the Executive Director does not.

QUESTION

May the executive director instruct or provide continuing education courses which the Board licenses?

OPINION

Pursuant to K.S.A. 46-286, as long as the executive director does not participate in the licensure, inspection or administration of the company in which he is employed or which he owns, the director would not be prohibited from teaching the courses or being a provider.

In addition, pursuant to K.S.A. 46-241, confidential information obtained during the director's official duties with the State may not be used for his financial gain or the financial gain of another.

Opinion No. 2000-16 Issued April 20, 2000

FACTUAL STATEMENT

A State Representative asked the Commission to issue an opinion as to whether a letter, sent to lobbyists during the legislative session, which includes the following language is acceptable under the Campaign Finance Act:

KK

As you are aware, I have an opponent in the upcoming primary election. I have scheduled a fundraiser at such and such location on such and such date (after Sine Die). The Governor will be there along with Legislative Leadership and a few surprises.

I need your support!

I appreciate your support!

Please mark your calendar. I look forward to seeing you on such and such date (after Sine Die).

QUESTION

Would such a letter violate the Campaign Finance Act?

OPINION

K.S.A. 1999 Supp. 25-4153a prohibits a legislator from accepting or soliciting a contribution during the legislative session. The word "solicit" is generally understood to mean asking or petitioning for something desired. Although this Commission has not issued a formal advisory opinion on this issue, it has, in the past, informally indicated that informational, advisory, or "heads up" fliers informing the recipient of an event which would occur after sine die, were permissible pursuant to K.S.A. 1999 Supp. 25-4153a. After careful review of the statute, the Commission now determines that K.S.A. 1999 Supp. 25-4153a prohibits communications, issued prospectively, which contain words such as "fund-raiser," or which request support that fits the definition of a contribution as defined by K.S.A. 1999 Supp. 25-4143(e)(1), or which the overall context leads the reader or listener to believe that he or she is being asked, during the legislative session, to make a contribution, even though the contribution will not be accepted or received until after sine die. Therefore, a prospective letter containing the language proposed would violate the Campaign Finance Act.

Opinion No. 2000-17 Issued May 18, 2000

FACTUAL STATEMENT

The Deputy Director of the Kansas Department of Revenue's Division of Property Valuation explained that NASA and the University of Missouri have offered to pay all of the expenses for a member of their staff to attend the MidAmerica GIS Symposium and an invitation only event held in conjunction with the conference. She informed us that the Department of Revenue considers this conference to be beneficial and useful to the agency, but, due to budget constraints, the agency will not be able to reimburse this employee for expenses associated with the conference.

QUESTION

May this State employee accept reimbursement from NASA and the University of Missouri for the expenses associated with attendance at the MidAmerica GIS Symposium and an invitation

LL

only event held in conjunction with the conference?

OPINION

As a classified state employee, this employee's ability to accept reimbursement for these expenses is covered by K.S.A. 1999 Supp. 46-237a(d)(2). Because Mr. Swisher's presence at the conference serves a legitimate state purpose, and your agency, absent its current budget constraints, would authorize payment for the travel and expenses, Mr. Swisher may accept the expenses associated with attendance at this conference.

Opinion No. 2000-18 -- Issued May 18, 2000

FACTUAL STATEMENT

The Deputy Director of the Kansas Department of Revenue's Division of Property Valuation explained that a member of her staff is a member of the Board of Directors for the Kansas Association of Mappers (KAM). KAM will be a sponsor of the MidAmerica GIS Symposium and therefore, has been given two complimentary registrations for the symposium. This year, your employee, as a board member of KAM, has agreed to represent KAM at the symposium and therefore, will be given the complimentary registration by KAM.

QUESTION

Is it a violation of the State Governmental Ethics laws for this employee to accept the complimentary registration from KAM?

OPINION

Because this employee has been offered the complimentary registration as a KAM board member, and not because of her position with the State, the state level conflict of interest laws would not prohibit her from accepting the registration. See K.S.A. 1999 Supp. 46-237a(b).

Opinion No. 2000-19 -- Issued May 18, 2000

FACTUAL STATEMENT

The attorney for the City of Galena, Kansas informed the Commission that in 1998 and 1999 the City of Galena was involved in a competitively bid contract with Engineering Management Consultants (EMC). Mr. Jack Murray was, at that time, an employee of EMC and substantially participated in the making of this contract. He and EMC have each received compensation from the City pursuant to this contract and approximately \$9,000 remains payable on this contract. On March 1, 2000, the City of Galena hired Mr. Murray as its City Manager.

QUESTION

MM

II. Are there any state level conflict of interest provisions that would prohibit Mr. Murray from continuing to accept compensation pursuant to this contract while he is the City Manager?

III. Are there any local level conflict of interest provisions that would prohibit Mr. Murray from continuing to accept compensation pursuant to this contract while he is the City Manager?

OPINION

With respect to the first question, there are no statutes in the state level conflict of interest provisions (K.S.A. 46-215 *et seq.*) that would apply to a city employee in the situation you have described.

With respect to the second question, K.S.A. 75-4304 applies. We first note that Mr. Murray did not participate in the making of this contract as an employee of the City of Galena. Nonetheless, because the contract at issue was let after a competitive bid procedure and was advertised for by published notice, the prohibitions in K.S.A. 75-4304(a) would not apply. Pursuant to K.S.A. 75-4305, Mr. Murray would be required to file a statement of substantial interests noting his involvement with EMC and the contract at issue prior to acting upon any matter which will affect his interests.

Opinion No. 2000-20 -- Issued May 18, 2000

TO ALL INTERESTED PERSONS

Pursuant to K.S.A. 25-4159, the Kansas Governmental Ethics Commission takes the opportunity to issue its opinion with respect to the prospective application of Section 14 of House Bill 2627.

OPINION

The 2000 Legislature passed House Bill 2627 which will become law on July 1, 2000. Section 14 states in pertinent part:

"No political committee, a major purpose of which is to expressly advocate the nomination, election or defeat of a clearly identified candidate for the legislature or to make contributions or expenditures for the nomination, election or defeat of a clearly identified candidate for the legislature, shall be established by a member of the legislature."

The Commission now determines that the phrase "shall be established by a member of the legislature" is prospective in nature. Therefore, political committees established by members of the Legislature prior to the effective date of this statute will not be prohibited by this statute and may continue to operate in accordance with the provisions of the Campaign Finance Act.

NN

Opinion No. 2000-21 -- Issued May 18, 2000

TO ALL INTERESTED PERSONS

Pursuant to K.S.A. 25-4159, the Kansas Governmental Ethics Commission takes the opportunity to issue its opinion on the interpretation of the phrase "time of . . . the personal staff of any elected officer" as used in K.S.A. 1999 Supp. 25-4169a.

OPINION

The Commission now determines that the time of personal staff members of elected officers may be used to promote the campaign of any candidate regardless of who employs that staff member.

Opinion No. 2000-22 -- Issued May 18, 2000

TO ALL INTERESTED PERSONS

Pursuant to K.S.A. 46-254, the Kansas Governmental Ethics Commission takes the opportunity to issue its opinion as to whether gifts and hospitality provided to a legislator or candidate for the legislature by a lobbyist are attributed to the lobbyist or the lobbyist's client(s) when considering the limits imposed by K.S.A. 1999 Supp. 46-237.

OPINION

Pursuant to K.S.A. 1999 Supp. 46-237, the Commission determines that the value of gifts provided to a legislator or candidate for the legislature by a lobbyist on behalf of a client are attributed to the limits imposed by this statute for the lobbyist's client or clients on whose behalf the gift or hospitality was provided. Therefore, a lobbyist may provide a gift or gifts having an aggregate value of less than \$40 in any calendar year to each legislator on behalf of each client whom he or she represents.

The Commission notes that K.S.A. 1999 Supp. 46-237 was amended by House Bill 2627. Effective July 1, 2000, there will be a \$100 limit on hospitality in the form of recreation given to state officers or employees subject to the prohibitions of K.S.A. 1999 Supp. 46-237. The analysis noted above will apply to this new limitation as well.

Opinion No. 2000-23 Issued May 18, 2000

TO ALL INTERESTED PERSONS

Pursuant to K.S.A. 46-254, and the enactment of House Bill 2627 during the 2000 legislative session, the Kansas Governmental Ethics Commission takes the opportunity to issue its opinion

clarifying what records must be maintained by a lobbyist pursuant to K.S.A. 46-269 and K.A.R. 19-63-6.

OPINION

Pursuant to K.S.A. 1999 Supp. 46-269, the Commission now determines that in addition to the items listed in K.A.R. 19-63-6, a lobbyist must maintain the following:

1. Chart of accounts (if applicable);
2. General ledger;
3. Bank and credit card statements for all accounts held in connection with lobbying activities including any personal accounts used in connection with lobbying. Additionally, for these accounts, the following support documentation must be available:
 - a. Deposit slips;
 - b. Canceled checks;
 - c. Receipts and invoices to substantiate all expenditures and reimbursements;
4. Lists of persons attending meals, entertainment or hospitality events which must be reported pursuant to K.S.A. 1999 Supp. 46-269 as amended by House Bill 2627.

Opinion No. 2000-24 Issued June 21, 2000

FACTUAL STATEMENT

The Governor of the State of Kansas explained that he will be attending the 2000 Republican National convention. During the Convention he will be casting the delegates and will be honored by an organization in recognition of his work as the Governor of Kansas. His office has advised Commission staff that he will be fulfilling his role as a delegate for approximately one to three hours during one session of the Convention. In addition, he will be addressing different events and conducting official functions in his capacity as Governor. He has informed us that he will be performing all of these functions in his capacity as Governor and not in his personal capacity as the party delegate.

QUESTION

May the Governor use campaign funds to pay for expenses associated with the Republican National Convention when he is performing functions in his capacity as Governor?

OPINION

Because he will only be spending approximately one to three hours as a party delegate during one session of the Convention, and the remainder of his time will be spent performing duties in his position as the Governor of Kansas, this factual situation differs from those presented in Opinion 1996-07 and 1996-14. Because the expense of attending the convention is necessitated by and has a direct connection with the office of Governor, it is an expense of holding political

office and may be paid for out of campaign funds.

Opinion No. 2000-25 Issued June 21, 2000

FACTUAL STATEMENT

An employee of the Kansas Department of Social and Rehabilitation Services (SRS) explained that in 1996 Maximus was awarded a competitively bid contract with SRS. This contract included an option to renew. Pursuant to this provision, the Maximus contract was renewed for one year. There were no changes to the contract at the time of the renewal. Although this employee was not involved in the making of the original contract, she was substantially involved in the making of the renewal contract.

QUESTION

May this state employee accept employment with Maximus?

OPINION

Because the original contract was let pursuant to an advertised competitive bid process, and because the contract was renewed with no material changes, the restrictions listed in K.S.A. 1999 Supp. 46-233(a)(2), above, do not apply. Under the facts you have provided, you may accept employment with Maximus without violating the state level conflict of interest laws.

Opinion No. 2000-26 Issued June 21, 2000

FACTUAL STATEMENT

A food protection investigator with the Kansas Department of Health and Environment (KDHE) explained that he is considering purchasing a cotton candy business to supplement his retirement income once he retires at the end of this year. He will begin this business while he is still employed for the KDHE as a food protection investigator. He has made arrangements to exempt himself from all aspects of the inspection and licensing of his cotton candy business.

QUESTION

May a food protection investigator for the Kansas Department of Health and Environment operate a cotton candy business while still employed by the State?

OPINION

Pursuant to K.S.A. 46-286 this employee would be prohibited from participating in the licensure, inspection or administration of a business that he owns or operates. Because he will not be involved directly in the licensure, inspection or administration or enforcement of any regulation involving his cotton candy business,, this statute would not prohibit him from owning or

QQ

operating this business.

In addition, pursuant to K.S.A. 46-241, confidential information obtained during his official duties with the State may not be used for his financial gain or the financial gain of another.

Opinion No. 2000-27 Issued June 21, 2000

FACTUAL STATEMENT

A candidate for State Senate explained that he is employed by EBC, Inc. which operates six radio stations in North Central Kansas. His duties include voicing commercials and co-hosting a talk show on a local radio station. He has been advised by the National Broadcasting Association that once he becomes a legally qualified candidate, his company is obligated to offer his opponents, free air time equal to the amount of time his voice appears on the air. In order to eliminate this burden on his employer, he is considering remaining on staff but removing himself from all air-time activities. If this occurs, he will be required, at his own expense, to hire a replacement to fill his position as co-host for the local talk show.

QUESTION

May a candidate for State Senate use campaign funds to hire a replacement to fill his position as a co-host for a local radio talk show, when the replacement is necessitated by federal equal air-time laws directly related to his candidacy?

OPINION

Pursuant to K.S.A. 1999 Supp. 25-4157a, the question presented requires this Commission to determine whether the cost of hiring a replacement for a radio talk show necessitated by federal equal air-time laws directly related to the candidacy of a candidate is for a "legitimate campaign purpose." Under the facts presented, the Commission is not persuaded that the cost of hiring a replacement for a radio talk show is a "legitimate campaign purpose." Therefore, the replacement may not be paid for with campaign funds.

Opinion No. 2000-28 Issued June 21, 2000

FACTUAL STATEMENT

An Assistant Trego County Attorney explained that in conjunction with Opinion 1999-05 the Trego County Commissioner at issue in that opinion filed the appropriate disclosure form. This commissioner and her husband are now selling the land in question and another commissioner has questioned whether the sale of this land raises any ethical violations of the local level conflict of interest laws.

QUESTION

Pursuant to the local level conflict of interest laws, may the commissioner and her husband sell their land?

OPINION

The Trego County Commissioners are governed by the local level conflict of interest laws (K.S.A. 75-4301 *et seq.*). We have reviewed those laws and find nothing that would prohibit the transaction described.

Opinion No. 2000-29 Issued June 21, 2000

FACTUAL STATEMENT

An Assistant Secretary for the Kansas Department of Agriculture (KDA) explained that his primary area of responsibility is supervising the regulatory program areas of food safety, environmental protection, and consumer protection. He informed us that pursuant to HB 2674, the State's Grain Commodity Commissions (Commissions) will obtain legal operating authority. These Commissions may now choose to contract with the private sector, including certain commodity associations, for administration of their programs. He is considering leaving the State and accepting employment with one of these commodity associations or a with a human resource leasing company that will lease employees to the commodity association. He informed us that he has not participated in the making of any contracts with any of the commodity associations or the human resource leasing company.

QUESTIONS

1. May he accept employment with a commodity association or a with a human resource leasing company that will lease employees to the commodity association without violating State Governmental Ethics laws?
2. Are there any governmental ethics laws which would prohibit him from performing lobbying functions for a commodity association?

OPINION

Pursuant to K.S.A. 1999 Supp. 46-233(a)(2), he would be prohibited from accepting employment as an employee, independent contractor, subcontractor or as a consultant with a company, if he, as a state employee, had participated in the making of any non-competitively bid contract with that company. Because he has not been involved in the preparation or participated in the making of a contract with his prospective employer, he would not be prohibited from accepting employment with that entity. With respect to the second question, we have reviewed the state level governmental ethics laws and find no provision that would prohibit him from leaving state employment and then performing lobbying functions for a commodity association.

SS

Opinion No. 2000-30 Issued June 21, 2000

FACTUAL STATEMENT

The State Librarian explained that the Bill & Melinda Gates Foundation (the Foundation) has informed him that the State of Kansas may be eligible to take part in the Foundation's State Partnership Grant program. In order to submit an application for a grant, the State Librarian must attend the State Library Grant Application Workshop which will be held in Seattle on September 6-8, 2000. The Foundation has offered to pay the airfare, lodging, ground transportation, and group meals for the Librarian and his deputy or library development director.

QUESTION

May the State Librarian and his deputy or library development director accept reimbursement from the Bill & Melinda Gates Foundation for the expenses associated with attendance at the State Library Grant Application Workshop?

OPINION

Pursuant to K.S.A. 1999 Supp. 46-237a(d)(2), so long as his presence at the Application Workshop serves a legitimate state purpose and his agency would authorize payment for the travel and expenses, the Librarian and his designated employee may accept the expenses associated with attendance at this workshop.

Opinion No. 2000-31 Issued June 21, 2000

FACTUAL STATEMENT

A part-time employee of the Kansas Department of Health and Environment explained that she currently works in the Child Care Licensing and Registration Division performing policy and regulation development. Her duties primarily require her to write regulations for the agency. She has been offered a part-time position with the Security Benefit Group advising them on how to meet state regulations in the development of their new child care facility.

QUESTION

May this employee operate this private consulting business while still employed by the State without violating any of the State Governmental Ethics laws?

OPINION

Three statutes apply to the question you have raised: K.S.A. 1999 Supp. 46-233(a), which involves participation in the making of contracts; K.S.A. 1999 Supp. 46-235, which governs restrictions on compensation of state employees; and K.S.A. 46-241, which involves the use of confidential information.

TT

Pursuant to K.S.A. 1999 Supp. 46-233(a)(a)(1), she will be prohibited, as a state employee, from being substantially involved in the preparation of or participation in the making of a non-competitively bid contract with the business by which she will be employed. Additionally, under subsection (a)(2) she would be prohibited from accepting employment as an employee, independent contractor, subcontractor or as a consultant with a company, if she, as a state employee, had participated in the making of any non-competitively bid contract with that company during the preceding two years.

Pursuant to K.S.A. 1999 Supp. 46-235, so long as it is not part of her current state duties to perform the type of service she would perform for the Security Benefit Group, K.S.A. 1999 Supp. 46-235 would not prohibit her from working for this company.

Finally, pursuant to K.S.A. 46-241, confidential information obtained during her official duties with the state may not be used for her financial gain or the financial gain of another.

Opinion No. 2000-32 Issued June 21, 2000

FACTUAL STATEMENT

The lobbyist for Sprint Corporation (Sprint) explained that Sprint has several divisions including Sprint Communications Company L.P. which is Sprint's long distance division (LDD); United Telephone Company of Kansas, United Telephone of Eastern Kansas and United Telephone of South Central Kansas which are Sprint's local telephone divisions in Kansas (LTD); and Sprint Spectrum L.P. which is Sprint's wireless service (Sprint PCS). The lobbyist informed us that all of these "divisions" are separate legal entities which generate their own revenues, have their own boards of directors and their own federal tax identification numbers.

He further explained that his salary is paid by Sprint/United Management Company (SUMC) which is a management service company providing various services to Sprint and its subsidiaries and affiliates. SUMC receives a management fee from each of the entities listed above and all of his lobbying expenses are allocated and reimbursed by each entity on whose behalf he performs services.

QUESTION

If a lobbyist lobbies on behalf of the subsidiary companies, may the lobbyist register only as a lobbyist for the parent company and still spend \$100 per legislator for "recreation provided as hospitality" for each of the subsidiary companies without registering as the lobbyist for the subsidiary companies?

OPINION

Pursuant to K.S.A. 46-265(a), a lobbyist may represent more than one company so long as he or she registers as the lobbyist for that company. Therefore, if a company has subsidiary companies which are separate legal entities, the lobbyist for the parent company may represent the

UU

subsidiary companies so long as he or she registers as the lobbyist for each of those companies. Similarly, a lobbyist may not lobby on behalf of the subsidiary company until he or she registers as that company's lobbyist.

In Opinion 2000-22, this Commission determined that pursuant to K.S.A. 1999 Supp. 46-237 as amended by HB 2627, a lobbyist may spend no more than \$99.99 on hospitality in the form of recreation and \$39.99 for other gifts per legislator per calendar year for each client he or she represents. Therefore, if a lobbyist has registered as the lobbyist for a parent company and its subsidiary companies, the lobbyist may provide hospitality in the form of recreation having an aggregate value of less than \$100.00 and a gift or gifts having an aggregate value of less than \$40 in any calendar year to each legislator on behalf of the parent company and each legally recognizable subsidiary company that he or she has registered to represent.

Opinion No. 2000-33 Issued June 14, 2000

FACTUAL STATEMENT

In Opinion 2000-01, this Commission informed the President of the United Methodist Health Ministry Fund (Fund) that he could reimburse classified state employees for their travel and related expenses, but that he could not reimburse the classified state employees for regular meals not provided at the conference or for the ground transportation fees for travel in Washington, D.C.

In Opinion 2000-17, this Commission determined that pursuant to K.S.A. 1999 Supp. 46-237a(d)(2), a classified state employee, whose presence at a Conference serves a legitimate state purpose and whose agency would authorize payment for the travel and expenses, may accept all of the expenses associated with attendance at the conference. Based upon the decision in this most recent Opinion, the Fund requests that the Commission reconsider its decision in Opinion 2000-01.

QUESTION

May the Fund reimburse classified state employees for regular meals not provided at the conference and for the ground transportation fees for travel in Washington, D.C.?

OPINION

Based upon the decision in Opinion 2000-17, the Commission has granted the request for reconsideration. Pursuant to K.S.A. 1999 Supp. 46-237a(d)(2) if the classified state employee's presence at the Conference serves a legitimate state purpose, and that employee's agency authorizes or would authorize payment for such travel and expenses, the classified employee may accept all of the expenses associated with attendance at this conference including the regular meals not provided at the conference and the ground transportation fees for travel in Washington, D.C.

Opinion No. 2000-34 Issued June 21, 2000

FACTUAL STATEMENT

The Ombudsman/Claims Advisor for the Workers Compensation Division of the Kansas Department of Human Resources explained that as a part of his state duties he is required to attend speaking engagements before groups of employers. Recently, he was asked to attend two such events. The first was a luncheon speaking engagement before an informal group of Salina employers who regularly gather for lunch to discuss issues important to small business employers. During this discussion, the gentleman who invited him purchased his lunch. The total cost was less than \$5.00. The second occasion occurred during a luncheon speech given to an association of physical plant managers. The association purchased his lunch, which, again, had a value of under \$5.00. In addition, the group presented him with a speaker's gift of a \$25.00 gift certificate to a local restaurant.

QUESTION

May a state employee accept lunch and a speaker's gift when provided during a speech given in the performance of the employee's job duties?

OPINION

Under the facts presented, it does not appear these meetings would constitute a public event or function pursuant to K.S.A. 46-237a(b)(1) or (c)(2). Therefore, the state employee would be prohibited from accepting these meals. Because this is a question of first impression, however, this opinion is prospective in application only.

Opinion No. 2000-35 Issued June 21, 2000

FACTUAL STATEMENT

The Assistant Secretary for the Kansas Department of Social and Rehabilitation Services explained that in 1995 one of her employees was substantially involved in the making of a competitively bid contract between the Children and Family Services (CFS) division of Social and Rehabilitation Services (SRS) and the Kansas Children's Service League (KCSL). This was a four year contract which contained a provision for renewal on a yearly basis. The original contract specifically provided that the shared risk provision would be "renegotiated during contract renewal after the first contract year." The first renewal contract amended several "outcome goals and indicators" and changed the "risk share" provision of the contract. The second and third contract renewals contained similar language as well as other terms listed as "additional contractual requirements." We understand that this employee substantially participated in the making of the renewal contracts and that the renewal contracts were not let

WW

1-65

after a competitive bidding procedure. KCSL has now extended this employee an offer of employment.

QUESTION

May this state employee accept employment with the Kansas Children's Service League?

OPINION

We have reviewed the modifications to the original contract, in the case at hand, and determine that the changes were material. Therefore, pursuant to Opinion 1999-33 and K.S.A. 1999 Supp. 46-233, the Year Two, Three, and Four renewal contracts were not contracts let after a competitive bidding procedure; thus, the restrictions in K.S.A. 1999 Supp. 46-233(a)(2) apply. Because this employee was substantially involved in the making of these contracts, she would not be permitted to accept employment with the Kansas Children's Service League until two years after performance of the contract is completed or until two years after she terminates state employment, whichever is sooner. The Year Four contract terminates on June 30, 2000. Therefore, she would be eligible to accept employment with the Kansas Children's Service League on June 30, 2002, or two years after she leaves state employment, which ever occurs first.

Opinion No. 2000-36 Issued June 21, 2000

TO ALL INTERESTED PERSONS

Pursuant to K.S.A. 25-4159, the Kansas Governmental Ethics Commission takes the opportunity to issue its opinion clarifying the nature of the disclosure required pursuant to K.S.A. 1999 Supp. 25-4156.

OPINION

In Opinion 1994-22, with respect to what is now subsection (b)(1)(A), the Commission stated:

"From a review of K.S.A. 25-4156(b)(1) it is our opinion that the following rules apply:

- "1. If the advertisement is placed by a political committee, the chairperson's name must appear.
- "2. If the ad is placed by a candidate or candidate committee, the treasurer shall be listed as the responsible person.
- "3. If the advertisement is placed by an organization other than a political committee, candidate, or candidate committee, which has a chairperson, the chairperson's name must appear.
- "4. If the ad is placed by an organization other than a political committee, candidate, or candidate committee which does not have a chairperson, then the responsible individual listed shall be:
 - "(a) The individual who is the primary funding source.

- "(b) If no individual is the primary funding source, then the individual who controlled the decision to place the ad.
- "(c) If no one individual controlled the decision, then the individual who controlled the funds.
- "5. If the ad is placed by an individual, that individual's name shall appear.
- "6. Under no circumstance is the name of the organization alone sufficient." The Commission now determines that the above quoted language applies to subsections (b)(1)(A)-(C). Therefore, all items requiring the disclosure of the responsible party shall list either the chairperson, treasurer or other responsible party in accord with the rules listed above.

In addition, the Commission notes that the disclosure required pursuant to subsections (b)(1)(A)-(C) must appear at the bottom of the item and must contain both the name of the responsible party and the name of the organization which the responsible party represents. For guidance, the Commission provides the following examples of adequate disclosures placed at the bottom of the item:

Paid for by the John Doe Campaign, Jane Doe, treasurer.
Paid for by John Doe for County Treasurer, Jane Doe, treasurer.
Sponsored by Committee to elect Jane Doe, John Doe, Chairman.
Paid for by ABC Political Action Committee, Jane Doe, Treasurer.

Advertisement

Paid for by Committee to elect Jane Doe, John Doe, Chairman.

Only individuals who make an independent expenditure of \$2,500 or more are permitted to list only their name at the end of the item.

The Commission notes that individuals making expenditures in an aggregate amount of less than \$2500 within a calendar year who publish brochures, fliers or political fact sheets need not provide any disclosure.

ETHICS AND CAMPAIGN FINANCE

Governmental Ethics Act; Campaign Finance; Professional Services Sunshine Act

HB 2627 amends the Governmental Ethics Act, designates existing and new statutes as the Campaign Finance Act, and enacts the Professional Services Sunshine Act.

Ethics and Lobbying

- The bill expands to all officers and employees of the Executive Branch, the existing prohibition against soliciting or accepting anything of value in the employee's official position. Prior law imposed that prohibition on most, but not all, officers and employees of the Executive Branch. State officers and employees who are newly covered by the bill, are the Attorney General, Insurance Commissioner, State Treasurer, Secretary of State, and most unclassified employees.
- The bill prohibits any state officer, employee, candidates for state office, and state officer elect, from accepting hospitality in the form of recreation having an aggregate value of \$100 or more in a calendar year from any one person having a special interest. Under prior law, there was no dollar limit on hospitality in the form of recreation. The bill also repeals a provision that specified that transportation and lodging are not considered part of recreation.
- In addition to current lobbying expenditure reporting requirements, the bill requires lobbyists who expend an aggregate \$100 or more for lobbying in a reporting period, to report any gift, entertainment, or hospitality provided to a legislator or member of the Judicial Branch, or legislative or judicial employees. The report must include the name of the recipient and the amount expended.
 - Exceptions to the reporting requirement are created for:
 - Meals:
 - if they are provided by personal friends or family members;
 - at public events attended as part of official business; or
 - provided for a reason other than the recipient's official position.
 - Food such as soft drinks, coffee, and snack foods which are not part of a meal;
 - Entertainment or hospitality in the form of recreation, food, and beverages at an event to which the following have been invited:
 - All members of the Legislature or all members of either house; or
 - All members of a party caucus of the Legislature or members of a party caucus of either house.

- The bill creates an exception to the general prohibition against state officers and employees soliciting things of value. That exception applies only when no specific course of official action is to be followed and the solicitation is for the benefit of a national, non-profit, nonpartisan organization established to serve and educate legislators or a similar organization that serves the executive branch in all states.

Campaign Finance

- The bill prohibits anyone other than an individual from making campaign contributions, from January 1 until *sine die* adjournment of the Legislature, to any recognized political party committee for the House or Senate. Those committees also are prohibited from accepting or soliciting contributions from anyone other than individuals during that time period. Prior law imposed those restrictions on legislators, candidates for the Legislature, state officers elected on a statewide basis, candidates for statewide office, and their candidate committees entities.
- Legislators cannot establish political committees (PACs), commonly called leadership PACs, a major purpose of which is expressly advocating the nomination, election, or defeat of a clearly identified candidate for the Legislature or making contributions or expenditures for such candidates.
- Finally, the bill clarifies that a political committee is not a candidate or party committee for purposes of the Campaign Finance Act.

Professional and Consultant Contract Procurement

The bill enacts the Professional Services Sunshine Act which creates requirements for solicitation and contracting for a variety of professional services, imposes reporting requirements, and provides for oversight of certain contracting activities by the Legislative Budget Committee. The act defines "professional services" as services performed under contract with a state agency by any certified public accountant, attorney, or individual or firm that provides professional or technical advice or opinion under contract. The term "professional services" specifically does not include services of persons who assist with preparation of expert testimony or persons who serve as expert witnesses in litigation.

General Requirements. The act requires that all professional services be procured in accordance with existing law that establishes the procurement negotiating committee procedure (KSA 75-37,102). The act creates a number of exceptions to that general requirement. The requirement would not apply to:

- Services that the Director of Purchases determines are exempt from the statutory competitive bid requirements (in those cases, the Director of Purchases could delegate to the agency the authority to enter into the contract under procedures prescribed by the Director);
- Contracts with other state agencies, federal agencies, local units of government, agencies or local governments of other states, or private nonprofit educational institutions;
- Contracts of \$25,000 or less in a single fiscal year (any such contracts must be procured by competitive negotiation with at least two entities unless the agency head determines that procedure is not in the state's best interest);

- Contracts for architectural services, engineering services, construction management, or ancillary technical services all of which must be procured in accordance with existing law;
- Contracts by the Board of Governors of the Health Care Stabilization Fund, which must be procured in accordance with existing law; and
- Contracts entered into by the Insurance Commissioner in emergency situations dealing with impaired or insolvent insurers when the interests of the state would be jeopardized by the procurement negotiating committee process.

Large Legal Contracts. The act creates special procedures for contracts for legal services if the fee for those services is reasonably expected to exceed \$1 million unless the services are to defend the state or a state agency, officer, or employee. In the case of large legal contracts, the Director of Purchases must submit the proposed request for proposals (RFP) to the Legislative Budget Committee. Within 30 days of receiving the proposed RFP, the Committee may hold a public hearing and must issue a report to the Director of Purchases. The report is to include any proposed changes to the RFP. The Director is required to review the Committee's report and adopt a final RFP as deemed appropriate in view of the report. The final RFP must be filed with the Committee.

If the final RFP does not contain the changes proposed by the Committee, the Director must submit a letter to the Committee stating the reasons for not including the changes. The Director cannot release the final RFP for at least ten days after it is filed with the Committee.

If the Committee does not suggest any changes to the proposed RFP within 60 days of receiving it, the Director may release the RFP.

After awarding a contract for legal services costing \$1 million or more, the Director of Purchases is required to submit the contract to the Legislative Budget Committee. Within 30 days of receiving the contract, the Committee may hold a public hearing on the contract and must issue a report to the Director of Purchases. The report must include any concerns of the Committee.

Contingency Fee Legal Contracts. Attorney fees to be paid by the state or defendant when the attorney was hired by the state on a contingency fee basis must be approved by the judge after the evidentiary hearing and prior to final disposition of the case by the district court. Anyone may provide information to and be heard by the court regarding the reasonableness of the fees paid by the state or defendant. Compensation for attorney fees for services performed in an appeal of a judgement in any such case must be approved after an evidentiary hearing by the appropriate appellate judge. The following must be considered by the judge or justice determining the reasonableness of the compensation:

- The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the attorney;
- The fee customarily charged in the locality for similar legal services;

- The amount involved and the results obtained;
- The time limitations imposed by the client or by the circumstances;
- The nature and length of the professional relationship with the client;
- The experience, reputation, and ability of the attorney or attorneys performing the services;
- Whether the fee is fixed or contingent.

Reporting. The act imposes reporting requirements on agencies and on the Director of Purchases:

- Any state agency that enters into a professional services contract for \$5,000 or more that was not competitively negotiated must report to the Director of Purchases at least once each quarter during the term of the contract.
- The Director of Purchases is required to report at least quarterly during the term of each contract for professional or consultant services of \$5,000 or more that is exempt from the procurement negotiation committee and the competitive negotiation requirements. The contents of the report are not specified in the act.
- In the case of legal services costing \$1 million or more to defend the state, the Director of Purchases must report quarterly the case citation and the filing date of the action during the course of the proceedings.
- The Director of Purchases also must prepare a detailed quarterly report of each legal proceeding that has been completed on a contingency fee basis. The report must include the hours worked on the case, expenses incurred, aggregate fee, and the hourly rate, based on hours worked divided into the fee recovered, less expenses.

Required reports from the Director must be submitted to the Legislative Coordinating Council, the Chairpersons of the Senate Ways and Means and House Appropriations Committees, and the Chairperson of the Kansas Performance Review Board.

Purchasing With Grant Funds. The act contains two provisions applicable to agencies that receive grants. First, expenditures of grant funds from any source are specifically subject to the competitive bid law, the procurement negotiating committee law, and the exceptions and reporting requirements of the act. Second, the act is not to be construed to allow federal grants, specifically, to be treated differently than other state funds unless the federal grant imposes special requirements.