

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 February 14, 2001 in Room 521-S of the Capitol.

All members were present except: Representative Carlos Mayans, Excused
Representative Steve Huebert, Excused
Representative John Toplikar, Excused

Committee staff present: Dennis Hodgins, Research
Shirley Weideman, Secretary

Conferees appearing before the committee: Kathy Greenlee, Kansas Insurance Department
Tim Shallenburger, State Treasurer
Representative Jene Vickrey

Others attending: See attached list

Dennis Hodgins, Legislative Research Department, briefed the staff on **HB 2489** and **HB 2490**. On HB 2489 he said there would be a change in compensation from \$270 to \$450 per two-week pay period between sessions starting in 2002. He indicated that no gifts would be allowed in the form of loans, gratuity, special discounts, favors, hospitality, service or any economic opportunity. He also said there are exceptions on page 4, lines 34-42 and page 5, lines 2-12 (gifts from personal friends, nonprofit organizations, etc.). He indicated that HB 2490 would prohibit hospitality in the form of food and beverages being accepted by state officers and employees having an aggregate value of \$40 or more and for entertainment having an aggregate value of \$100 or more. Mr. Hodgins said there are similar exceptions as are in HB 2489. He said meals and gifts under \$10 value would be excluded from having to be itemized and items over that amount are reported in the aggregate.

Hearings were opened on **HB 2489** and **HB 2490**.

Kathy Greenlee, General Counsel, Kansas Insurance Department, spoke as being neutral regarding **HB 2489** and **HB 2490**. She said she does many presentations, which are mainly informational in nature, to a wide range of groups. Ms. Greenlee said that she has two problems with the proposed legislation. She indicated that the first problem is with "speaker's gifts", especially the definition of speaking at a "public function" as it does not describe what they do on a regular basis, since the event may be held for a membership organization or for invited guests only and not for the entire general public. Ms. Greenlee said her second problem with the legislation involves meals. She indicated that there has been confusion about attending and speaking at a luncheon where they cannot eat the meal because that is prohibited by law unless it is a "widely attended event" or "public event" and whether the meal is a pretext for "exclusive access to the person" receiving the meal. Also Ms. Greenlee said there are "dual rules" for legislators versus the Governor, state officers and others in the executive branch of the government as amended in K.S.A.46-269 in 2000. (attachment #1) Ms. Greenlee answered committee questions.

Chair Powell directed the committee's attention to the written testimony of Natalie Haag, Legal Counsel, Office of the Governor, as a proponent for **HB 2489** and **HB 2490**. He reviewed the Governor's recommendations of: 1) allowing state employees to receive a gift valued at \$10 or less, 2) allowing lobbyists to provide a gift to legislators valued at \$10 or less without reporting the same under the lobbyist-reporting bill, 3) clarifying the meal provision for state officials attending an event as an official spokesperson or presenter and 4) providing a "due process" procedure for ethics violations and complaints by providing authority for the probable cause hearing on a complaint to be held before a hearing officer(s). (attachment #2)

Chairman Powell also called the committee's attention to information received from Chip Wheelen, Kansas Society of Association Executives. (attachment #3)

Members of the committee were encouraged by Chairman Powell to review an article from the Manhattan Mercury regarding Representative Alldritt.. (attachment #4)

CONTINUATION SHEET

Minutes of the February 14, 2001 Ethics and Elections Committee.

Tim Shallenburger, State Treasurer, testified as a proponent for **HB 2489** and **HB 2490**. He gave his recommendations for removing the requirement to itemize gifts or food valued at \$10 or less and directing that those covered under K.S.A. 46-237a should fall under the same reporting requirements as the legislative branch, allowing each elected official to establish directives to his or her own staff that would restrict acceptance of any item covered under the year 2000 legislation. He also suggested that elected officials should be able to allocate campaign funds for the expenses incurred by the official's spouse. Treasurer Shallenburger said that there needs to be one set of rules for all, excluding the Governor. (attachment #5) The Treasurer answered questions asked by the committee.

Representative Jene Vickrey gave the committee testimony on a recommendation for a pay raise for legislators. He said that it is hard to raise a family and pay bills when you are away from your family and job for approximately 4 months of the year. Rep. Vickrey replied to a question by Rep. Alldritt by saying that he may make \$16,000 per session if he counts mileage reimbursement. He suggested an increase in the pay rate for legislators and disallowing any other compensation, such as lobbyist's gifts.

Chairman Powell closed the hearings on **HB 2489** and **HB 2490**.

The minutes were approved for January 24 and January 29 by unanimous consent, without objection.

Meeting was adjourned at 4:45 p.m. The next scheduled meeting is February 19 at 3:30 p.m.

House Ethics and Elections

GUEST LIST Date Feb. 14, 2001

| Your Name | Representing |
|----------------|--------------------------|
| Chris Krch | Minority Leader Staff |
| Jewe Vickroy | Rep. |
| Vera Gannaway | GEC |
| Carol Williams | GEC |
| Kathy Sessler | KS Insurance Dept |
| Chip Wheelen | Society of Assoc. Execs. |
| Bruce Dimmitt | Independent, |
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Kathleen Sebelius
Commissioner of Insurance
Kansas Insurance Department

TESTIMONY

TO: House Ethics and Elections Committee
FROM: Kathy Greenlee, General Counsel
RE: Governmental Ethics Issues
DATE: February 14, 2001

Today you are considering two bills: House Bill 2489 and House Bill 2490. The Kansas Insurance Department is neutral on these bills. We are, however, concerned about the governmental ethics issues with which you are dealing.

A few weeks ago, Commissioner Sebelius asked me to prepare a memo summarizing the main governmental ethics problems faced by employees of the Kansas Insurance Department. Our main concerns stem from the requirements and interpretation of K.S.A. 40-237a. A copy of my memo is attached and I would like to review it with you.

Both of the bills that you are considering raise issues that are similar to the ones addressed by my memo. House Bill 2489 Section 3 adds specific reference to K.S.A. 46-237a. House Bill 2490 Sections 2 and 3 make reference to and amend K.S.A. 46-237a.

I believe that K.S.A. 46-237a is cumbersome and could be improved with the addition of some definitional sections. The lack of defined terms may ultimately impact both House Bill 2489 and House Bill 2490.



Kathleen Sebelius
Commissioner of Insurance
Kansas Insurance Department

MEMORANDUM

TO: Commissioner Sebelius
FROM: Kathy Greenlee, General Counsel
RE: Governmental ethics issues
DATE: January 31, 2001

You asked me to summarize for you the main governmental ethics issues faced by employees of the Kansas Insurance Department. I can identify three main concerns.

#1 Speaker's Gifts

Kansas Insurance Department employees frequently make presentations to industry groups, trade associations and consumer organizations. Some presentations occur during mealtime, others do not. Host organizations often thank the invited speaker and present them with a token gift. The gift giving is done at the end of the speech in front of a room full of people. Speaker's gifts are typically standard and the host organization presents the same gift to each guest speaker at every meeting.

K.S.A. 46-237a states that:

(b) No person subject to the provisions of this section shall solicit or accept any gift, economic opportunity, loan, gratuity, special discount or service provided because of such person's official position, except:

(1) A gift having an aggregate value of less than \$40 given at a ceremony or public function where the person is accepting the gift in such person's official capacity;

(Subsections (b)(2), (3), and (4) also contain exceptions but they rarely apply.)

The key problem for Kansas Insurance Department employees is the term "public function." The Kansas Governmental Ethics Commission has defined this term very narrowly. If the event is held for a membership organization or for invited guests, the event is not considered by the Ethics Commission to be a public event. The Ethics Commission considers public events to be those events to which the entire general public

has been invited. Rarely do Kansas Insurance Department employees make presentations in such settings. Instead, we provide information to a gathering of members of an organization or association. See Kansas Ethics Commission Opinion No. 2000-34 Amended.

#2 Meals

Issue A: Widely Attended Events

The Kansas Ethics Commission recently amended Opinion No. 34 to clarify that a state employee may accept a meal offered in conjunction with the employee giving a speech. The opinion relies on language found at K.S.A. 46-237a(c) that states:

No person subject to the provisions of this section shall solicit or accept free or special discount meals from a source outside of state government, except:

(1) Meals, the provision of which is motivated by a personal or family relationship or provided at events that are widely attended. An occasion is "widely attended" when it is obvious to the person accepting the meal that the reason for providing the meal is not a pretext for exclusive or nearly exclusive access to the person."

The reason that an employee may accept a meal in the context of giving a speech is that the Ethics Commission will presume that the meal is "not a pretext for exclusive or nearly exclusive access to the person."

The "widely attended" concept may apply to other situations. The critical issue for state employees is the individual employee's perception of the reason behind the offer of a meal. If it is obvious that the meal is not a pretext for access, a meal may be accepted.

The problem that our employees encounter is general confusion about the law. The Ethics Commission issued Opinion No. 34 in June. That opinion prohibited acceptance of a meal. The Commission then amended the opinion in November reversing itself and allowing the meal. K.S.A. 46-237a was adopted in 1997. State employees are still confused by the meaning of the law, especially when the interpretation of the law changes.

Issue B: Public Events

According to K.S.A. 46-237a(c)(2):

No person subject to the provisions of this section shall solicit or accept free or special discount meals from a source outside of state government, except:

(2) meals provided at public events in which the person is attending in an official capacity.

This is a narrow exception. The Ethics Commission considers public events to be those to which the general public is invited.

#3 Dual Rules

In 2000, the legislature amended K.S.A. 46-269, the statute that controls the reporting requirements of lobbyists. The legislature also made changes to several other ethics statutes.

In your capacity as Commissioner, you are frequently invited to attend events at which food and nominal gifts are provided. Members of the legislature are also invited to participate in these same events. The prohibitions found in K.S.A. 46-237a, regarding meals, gifts and travel, do not apply to the legislature. The prohibitions only apply to the governor; the lieutenant governor; the governor's spouse; all officers and employees of the executive branch of state government; and all members of boards, commissions and authorities of the executive branch of state government.

As Commissioner, you may be invited to attend an event at which legislators are present. If the event is a public event, you may accept a meal. If the event is widely attended, you may accept the meal. If you receive a gift of less than \$40 at a public ceremony, you may accept the gift. However, these rules are not clear.

I have attached a document that illustrates the confusion regarding the dual rules for legislators and others. The document is entitled "Governmental Ethics Information for Dinner and a Movie." Members of the legislature and other Kansas elected officials have been invited to attend an event at Westridge Mall. Western Resources is hosting the event. The document indicates the cost per person for elected officials. According to my interpretation of K.S.A. 46-237a, I believe the information you were given may be incorrect.

You might be able accept the dinner at Western Resources, depending on whether or not this event meets the widely attended event exception found at K.S.A. 46-237a(c)(1). I believe that you may accept the treats at Westridge 8 Theater. Treats meet the snacks exception found at K.S.A. 46-237a(c)(4). I do not find an exception for the movie ticket and, therefore, believe you must purchase your own ticket.

GOVERNMENTAL ETHICS INFORMATION
for
DINNER and a MOVIE

Because all members of the Kansas Legislature are invited to attend this event, food, beverage and entertainment expenditures for Legislators will be reported in the aggregate, not itemized and reported for individual members.

Other Kansas elected officials, executive branch state employees, and members of the Advisory Board to the Kansas Film Commission should make payment to Western Resources, Inc., for their costs of the events they attend:

| | |
|-------------------------------|-----------------|
| transportation | no charge |
| dinner at Western Resources | \$ 28.00 |
| "Ride with the Devil" ticket | \$ 3.00 |
| treats at Westridge 8 Theater | <u>\$ 10.75</u> |
| TOTAL PER PERSON | \$ 41.75 |

STATE OF KANSAS

BILL GRAVES, Governor
State Capitol, 2nd Floor
Topeka, Kansas 66612-1590



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OFFICE OF THE GOVERNOR

MEMORANDUM

TO: Senate Ethics and Local Government Committee Members
House Ethics and Elections Committee Members

FROM: Natalie G. Haag
Chief Legal Counsel and
Director of Governmental Affairs

DATE: February 13, 2001

SUBJECT: Pending ethics legislation

A number of bills have been introduced to address modifications to the ethics act regarding state employees and the lobbyist reporting provisions adopted last session. Carol Williams, Executive Director of the Governmental Ethics Commission, has shared several concerns with our office regarding the problems the Commission experiences enforcing the strict gift ban in these acts. Additionally, during the last year, the Ethics Commission addressed several problems with the restrictions on accepting meals. In light of these concerns, Governor Graves supports the following amendments to the ethics act and lobbyist reporting provisions.

- 1) The Governor supports an amendment to allow state employees to receive a gift valued at \$10 or less. This will avoid the cumbersome nature of returning pens, pencils, and coffee mugs provided by organizations to state employees.
- 2) The Governor supports a provision allowing lobbyists to provide gifts valued at \$10 or less without reporting the same under the lobbyist-reporting bill. Once again, this would allow legislators to receive coffee mugs, toothpaste and other kinds of gifts typically distributed at the beginning of the legislative session.
- 3) If necessary, the Governor recommends clarifying the meals provisions of the ethics laws to support the intent to allow state officials to receive meals when attending an event as an official spokesperson or presenter. Ms. Williams can provide insight into the current interpretation of the Ethics Commission on this issue.

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2-14-01
Attachment 2

4) The Governor supports clarifying the due process procedures for ethics violations and complaints by providing authority for the probable cause hearing on a complaint to be held before a hearing officer(s). Ms. Williams suggests the hearing officer(s) consist of several board members. I would suggest you discuss this issue with her.

The Governor's office appreciates your efforts to attempt to address these minor revisions to the ethics and lobbying reporting laws.

Kansas Society of Association Executives

Comments Regarding House Bill 2490
To The
House Ethics and Elections Committee
By Charles L. Wheelen
February 14, 2001

Thank you for the opportunity to express some concerns regarding the provisions of HB2490. These comments are submitted on behalf of the Kansas Society of Association Executives. The KSAE is an organization consisting of a diverse membership of professionals who are responsible for management of trade groups, associations of businesses, or associations of professionals. Almost without exception, our memberships include part of your constituency.

Because many of our members are appointed by their associations to communicate their public policy positions, we are required by law to be registered as lobbyists. This means we are subject to all the lobbying restrictions and reporting requirements, and we would be affected by the amendments proposed in HB2490.

House Bill 2490 appears to be an attempt to address some of the recognized problems related to regulation of legislators and lobbyists. But because it is inherently inconsistent, it would create more problems than it would resolve. For this reason, we are opposed to HB2490 in its current form.

For example, because K.S.A. 46-237 pertains to all state officers, including legislators, and because section two of the bill would apply K.S.A. 46-237a (restrictions on executive branch officers and employees) to K.S.A. 46-237, the restrictions imposed on the executive branch would apply to legislators as well. Yet the same section of the bill authorizes traditional hospitality and gifts that are banned in K.S.A. 46-237a. This would inevitably create confusion and compliance would be extremely difficult.

Section four of the bill appears to clarify that if a gift has a value of \$10 or less, or the food or beverage has a value of \$10 or less, the lobbyist need not report the name of the legislator who received the gift or the hospitality. Yet section five appears to ban all gifts unless the gift is in the form of recreational hospitality, and then allows such hospitality "gifts" up to \$99.99 per calendar year. This doesn't seem to make sense and is certainly inconsistent with the language contained in section two.

Perhaps more important, we must question whether there exists a genuine need to further restrict legislators' interactions with representatives of organized groups. Associations like ours serve a valuable purpose. We orchestrate a decision making process so that we can communicate the consensus of an entire industry or profession. Our ability to communicate those public policy positions should not be impaired because of excessive regulation of our interactions with legislators.

Hospitality in the form of food or recreation, as well as promotional items that advertise an industry or profession are routine practices in the private sector. Inviting a client or customer to lunch or to a sporting event is customary, as is the practice of giving customers modest gifts. These are widely accepted practices in the business world.

For these reasons we respectfully request your favorable consideration of a substitute for HB2490 which would address the recognized problems regarding itemized reporting as well as legitimize the provision of trade publications. Because you have heard these concerns previously, there is no need to reiterate.

Thank you for considering our comments. We respectfully request favorable action on our proposed substitute bill.

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Attachment 3

Proposed substitute for HB2490

Be it enacted by the Legislature of the State of Kansas:

Sec. 1. K.S.A. 46-269 is hereby amended to read as follows:
46-269. Each report required to be filed by K.S.A. 46-268, and amendments thereto, is a public record and shall be open to public inspection upon request. Such report shall disclose the following:

(a) The full name and address of each person who has paid compensation for lobbying to the lobbyist or has paid for expenses of lobbying by the lobbyist during the period reported.

(b) The aggregate amount or value of all expenditures made, except for expenses of general office overhead, by the lobbyist or by the lobbyist's employer for or in direct relation to lobbying during the reporting period, if such expenditures exceed \$100. Individual expenditures of less than \$2 shall not be required to be reported under this subsection. Every lobbyist shall keep detailed accounts of all expenditures required to be reported pursuant to K.S.A. 46-268, and amendments thereto. Such expenditures shall be reported according to the following categories of expenditures:

- (1) Food and beverages provided as hospitality;
- (2) entertainment, gifts, honoraria or payments;
- (3) mass media communications;
- (4) recreation provided as hospitality;
- (5) communications for the purpose of influencing legislative or executive action; and
- (6) all other reportable expenditures made in the performance of services as a lobbyist.

With regard to expenditures for entertainment or hospitality which is primarily recreation, food and beverages, only amounts expended on a state officer or employee or on such officer or employee's spouse shall be considered to be for or in direct relation to lobbying. Notwithstanding the requirements of this subsection and subsection (d), no lobbyist shall be responsible to report any expenditure by the lobbyist's employer of which such person has no knowledge.

~~—(c) (1) In addition to the information reported pursuant to subsection (b), each lobbyist expending an aggregate amount of \$100 or more for lobbying in any reporting period shall report any gift, entertainment or hospitality provided to members of the legislature, members of the judicial branch of government and any employees of the legislature or judicial branch of government. Such report shall disclose the full name of the legislator, member of the judicial branch and employee who received such gift, entertainment or hospitality and the amount expended on such gift, entertainment or hospitality.~~

~~—(2) No report shall be required to be filed pursuant to this subsection (c) for the following:~~

~~—(A) Meals, the provision of which is motivated by a personal or family relationship;~~

~~—(B) meals provided at public events in which the person is attending in an official capacity;~~

~~—(C) meals provided to a person subject to this section when it is obvious such meals are not being provided because of the person's official position;~~

~~—(D) food such as soft drinks, coffee or snack foods not offered as part of a meal; and~~

~~—(E) entertainment or hospitality in the form of recreation, food and beverages provided at an event to which the following have been invited:~~

~~—(i) All members of the legislature or all members of either house of the legislature; or~~

~~—(ii) all members of a political party caucus of the legislature or all members of a political party caucus of either house of the legislature.~~

~~(c) (d) Except as provided by subsection (c), whenever *Whenever* an individual lobbyist contributes to a single special event, such lobbyist shall report only the aggregate amount or value of the expenditure contributed by such lobbyist.~~

~~(d) (e) Whenever more than one lobbyist is employed by a single employer, the reports required by this section relating to such employer shall be made by only one such lobbyist and that lobbyist shall be the lobbyist who is most directly connected with the particular expenditure or gift, honoraria or payment. No expenditure or gift, honoraria or payment required to be reported by this section shall be reported by more than one lobbyist.~~

~~(e) (f) All accounts, records and documents of the lobbyist which relate to every expenditure reported or which should have been reported shall be maintained and preserved by the lobbyist for a period of five years from the date of the filing of such report or statement and may be inspected under conditions determined by the commission.~~

Sec. 2. K.S.A. 46-271 is hereby amended to read as follows: 46-271.

(a) No lobbyist shall offer, pay, give or make any: (1) economic opportunity, gift, loan, gratuity, special discount, favor, hospitality, or service having an aggregate value of \$40 or more in any calendar year, or (2) *hospitality in the form of recreation having an aggregate value of \$100 or more in any calendar year* to any state officer or employee of the legislative branch or legislative or candidate for state office with a major purpose of influencing such officer or employee in the performance of official duties or prospective official duties.

(b) Hospitality in the form of recreation, food and beverages are presumed not to be given to influence a state officer or employee or candidate for state office in the performance of official duties, except when a particular course of official action is to be followed as a condition thereon.

(c) Except when a particular course of official action is to be followed as a condition thereon, this section shall not apply to (1) any contribution reported in compliance with the campaign finance act as amended, or (2) a commercially reasonable loan or other commercial transaction in the ordinary course of business, or (3) *publications published on a regular basis by trade associations, professional associations, foundations or tax exempt organizations.*

Sec. 3. K.S.A. 46-269 and 46-271 are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

- Manhattan Mercury
- Olathe Daily News
- Parsons Sun
- Pittsburg Morning Sun
- Salina Journal
- id Winfield Daily Courier

Opinion

A proposal worth pursuing

It's such a sensible idea it's curious that it hasn't drawn more support before now. Maybe it's just too sensible.

The idea is Rep. Richard Alldritt's proposal to raise legislators' pay — modestly — and at the same time ban gifts and free meals for lawmakers.

It's sensible in part because legislators should get more pay than they do now; though Senate and House leaders get extra pay, total compensation for most lawmakers is about \$22,000. That's not bad for a part-time job, but legislative service is part-time in name only. As Rep. Alldritt, a Democrat from Harper, acknowledged, he knew what the job paid before he took it. He just didn't realize it was a year-round job that extended well beyond the 90-day legislative session.

How much of a raise legislators should get is, of course, a sticking point, but perhaps a bigger obstacle has been convincing constituents of the need for a raise. The issue has become a perennial one, with predictable comments but little follow through. After all, it can be hard to defend against the allegation on the campaign trail that you gave yourself a raise while other needs were inadequately addressed.

But it would be less difficult if candidates could assert that reasonable people would acknowledge that the raise was justified and that lawmakers acted wisely in prohibiting the gifts and meals that have long been part and parcel of the Legislature. Our hunch is that most constituents would prefer that the state, not private interests, provide the compensation for elected officials.

It's a good tradeoff. Yes, it would come with a cost; Rep. Alldritt proposes a raise from the current stipend of \$600 to \$956 a month for months the Legislature is not in session. That, coincidentally, is what lawmakers would be receiving now if the stipend had been increased at the rate of inflation since it was set in 1986.

This or similar proposals could bolster the confidence outside of Topeka in the Legislature and help erode the lingering perception that lawmakers give the benefit of the doubt to special interests who give them special treatment. That sounds sensible.



STATE OF KANSAS

Tim Shallenburger
TREASURER

900 SW JACKSON ST, SUITE 201
TOPEKA, KANSAS 66612-1235

TELEPHONE
(785) 296-3171

February 14, 2001

To: House Ethics and Elections Committee

From: Tim Shallenburger, State Treasurer

Re: HB 2489 & HB 2490

Chairman Powell and members of the committee:

I would like to thank you for the opportunity to submit written testimony for HB 2489 and HB 2490.

Before I share my thoughts on the topic at hand, I would like to recognize, what I consider to be the commendable efforts of the 2000 Kansas Legislature in seeking an appropriate answer for ethics reform.

However, I feel that the legislation passed last year has unfortunately, led to confusion by all those involved. It has become obvious to me, that state employees are still unsure as to how the legislation directly affects them. This, in no small part, has a lot to do with the Governmental Ethics Commission's difficulty in interpreting the law for state employees. I do not intend to direct criticism towards the Commission's office, instead I empathize with the Commission's attempt to interpret confusing legislation.

I would urge the committee to consider the following items:

- Remove the requirement to itemize gifts valued at \$10 or less.
- Remove the requirement to itemize food valued at \$10 or less.
- Direct those covered under K.S.A. 46-237a to fall under the same reporting requirements as the legislative branch.
- Allow each elected official to establish directives to his or her own staff, that would restrict acceptance of any item covered under the year 2000 legislation.
- Allow elected officials to allocate campaign funds for the expenses incurred by the official's spouse.

Again, thank you for your time.

House Ethics and Elections
2-14-01
Attachment 5