

MINUTES OF THE ETHICS AND ELECTIONS COMMITTEE:

The meeting was called to order by Chairperson Representative Tony Powell at 1:00 p.m. on March 26, 2001 in Room 521-S of the Capitol.

All members were present except: Representative Jim Morrison, Excused
Representative John Toplikar, Excused
Representative Ted Powers, Excused

Committee staff present: Theresa Kiernan, Office of the Revisor of Statutes
Shirley Weideman, Committee Secretary

Conferees appearing before the committee:

SB 314 - Proponent: Steve Kearney, Kansas State Trooper's Association

Others attending: See attached list.

Chairman Powell opened hearing on **SB 314 - Kansas Highway Patrol, political activity restrictions.**

Steve Kearney, Kansas State Trooper's Association, appeared before the committee as a proponent of **SB 314.** He said that the current statute does not allow members of the Kansas Highway Patrol to participate in any political exercise beyond casting a ballot. He mentioned a letter from Attorney General Robert Stephan from 1984 that outlines activities that are permissible by highway patrol members. Mr. Kearney indicated that the Kansas Highway Patrol should have the same rights to participate in political activity as other officers and employees of the State of Kansas. (attachment #1) Mr. Kearney answered questions asked by committee members.

There being no further discussion, hearing was closed on **SB 314.**

Representative Hermes moved and it was seconded by Representative Alldritt that SB 314 be passed favorably from the committee. Motion passed.

Chairman Powell asked for other bills that the committee wished to work. There were no further recommendations.

Meeting was adjourned at 1:15 p.m.



KANSAS STATE TROOPERS ASSOCIATION

March 26, 2001

House Ethics and Elections Committee Hearing on Senate Bill 314 1:00 p.m.

Chairman Powell and Members of the Committee:

My name is Steve Kearney. I am here today as Executive Director of the Kansas State Troopers Association to speak in favor of Senate Bill 314.

This measure is being offered to repeal obsolete language in existing statutes that currently limit the participation of members of the Kansas Highway Patrol in any political exercise beyond casting a ballot.

Existing Section (e) of KSA 74-2113 mandates that "No member of the patrol, including the superintendent, shall in any way be active or participate in any political contest in any primary, general or special election or participate in politics, **except to cast such member's ballot** (emphasis added). For any violation of this provision, the offender shall be summarily removed by the superintendent from the patrol.

Attached please find a copy of Attorney General Opinion 84-40 regarding political restrictions concerning members of the Kansas Highway Patrol. This opinion by then Attorney General Robert T. Stephan sets forth his analysis about the issue contained in Senate Bill 314. The Attorney General opined in 1984 regarding what he believed would be permissible activities by members of the Highway Patrol should the statute in existence then and currently in existence since SB 314 be put to a court challenge. However, the current statute still controls and conflicts with the Attorney General's opinion.

Members of the Kansas Highway Patrol that wish to participate in political activities and be more active in their communities would be hard pressed to violate the Kansas statutes. As law enforcement officers they take an oath to uphold the Constitution and the Laws of the State of Kansas. Should they choose to rely upon the Attorney General's opinion they are placed in the untenable position of violating a law they have sworn uphold, and be "summarily removed" from the Highway Patrol.

I submit to this committee that members of the Kansas Highway Patrol should be governed in their political activities under the same guidelines as any other state employee. I have also attached to my testimony a copy of a 1998 memo from Gov. Bill Graves to his cabinet secretaries. It makes clear that there are plenty of safeguards in place for state employees to participate to the fullest extent possible.



KANSAS STATE TROOPERS ASSOCIATION

Kearney Testimony
Page 2

In addition to my other activities, I am an adjunct professor in Criminal Justice at Washburn University. I recognize that this law hearkens back to the "spoils era". During that time, it was common practice – particularly in law enforcement -- to have public employees who "serve at the pleasure of..." putting up political yard signs while in their official vehicles, distributing political materials during work hours, displaying signs and stickers in their vehicles. This kind of activity took place before civil service protections were enacted, and other measures such as KSA 75-2953 were put in place to protect state employees from coercion in elections.

It is our request that this committee favorably consider SB 314 and afford the Kansas Highway Patrol the same opportunities to participate in political activities as any other state employee pursuant to other existing statues that we have already discussed. Thank you for your time and attention to this matter.

Have KHP Political Activity



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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ROBERT T. STEPHAN
ATTORNEY GENERALMAIN PHONE: (313) 296-2216
CONSUMER PROTECTION: 296-0751
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May 14, 1984

ATTORNEY GENERAL OPINION NO. 84- 40

Bert Cantwell
Superintendent
Kansas Highway Patrol
122 S.W. Seventh Street
Topeka, Kansas 66603

Re: State Boards, Commissions and Authorities--Kansas Highway Patrol--Patrol Created; Restrictions

Synopsis: In conformity with the provisions of K.S.A. 1983 Supp. 74-2113(e), as amended by Section 1 of 1984 Senate Bill No. 745, members of the Kansas Highway Patrol: 1. May be members of political clubs, but not officers of said clubs or members of a committee of such a club; 2. May not work as a volunteer for a partisan candidate, but may work as a volunteer for a non-partisan candidate for public office; 3. May put a political sign in their yards; 4. May place a candidate's bumper sticker on their personal automobiles; 5. May contribute money to a candidate's campaign committee, but may not engage in fundraising activities for a partisan candidate; 6. May be a candidate in a nonpartisan contest for city council or school board; 7. May not be a partisan candidate for a political office, even if they take a leave of absence without pay prior to filing for the office, with the understanding they would either resign or come back to work once the outcome of the election is known; 8. May attend a political rally when on an off-duty status, provided the member does not engage in any prohibited activity at said rally. Cited herein: K.S.A. 1983 Supp. 74-2113, as amended by 1984 Senate Bill No. 745, 5 U.S.C.A. §7324, U.S. Const., First Amend.

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Bert Cantwell
Page Two

Dear Mr. Cantwell:

You request our interpretation of K.S.A. 1983 Supp. 74-2113(e), as amended by Section 1 of 1984 Senate Bill No. 745. Specifically, you have submitted a list of political activities (enumerated below), and inquire whether members of the Kansas Highway Patrol are prohibited from engaging in such activities by the aforesaid statute.

K.S.A. 1983 Supp. 74-2113(e) [as amended] provides as follows:

"No member of the patrol, including the superintendent, shall in any way be active or participate in any political contest in any primary, general or special election or participate in politics, except to cast such member's ballot. For any violation of this provision, the offender shall be summarily removed by the superintendent from the patrol." (Emphasis added.)

As the underscored portion of the above-quoted statute indicates, a member of the patrol may not "participate in politics." The parameters of this prohibition are none too clear, and it might be argued that, since the statute impacts upon rights granted all citizens under the First Amendment to the U.S. Constitution, it is invalid due to facial overbreadth. Therefore, it is necessary to consider whether the statute is overbroad, and invalid on its face, or whether it can be saved through a limiting construction.

In Broadrick v. Oklahoma, 413 U.S. 601, 37 L.Ed.2d 830 (1973), the U.S. Supreme Court considered an overbreadth attack upon an Oklahoma statute, patterned after the federal Hatch Act, which, in part, prohibited classified employees from taking part in the "affairs of any political party or in any political campaign." See 37 L.Ed2d at 834; 5 U.S.C.A. §7324(a)(2). The plaintiff state employees had engaged in partisan political activities in violation of the aforementioned statute, and challenged its validity on the grounds of vagueness and overbreadth. The Supreme Court held that the statute was clearly constitutional as applied to the conduct with which the employees were charged, i.e. partisan political activity, and further held that, because the statute was not "substantially overbroad," the employees could not challenge the statute on the ground that it might be unconstitutionally applied to others. In so holding, the court noted that the traditional rules of standing were altered in the First Amendment

Bert Cantwell
Page Three

area to permit "attacks on overly broad statutes with no requirements that the person making the attack demonstrate that his own conduct could not be regulated by a statute drawn with the requisite narrow specificity." *Id.*, 37 L.Ed.2d at 840. However, the court stated that the application of the overbreadth doctrine has been employed "sparingly and only as a last resort," and has not been invoked "when a limiting construction has been or could be placed on the challenged statute." *Id.*, 37 L.Ed.2d at 841. Further, the court found that overbreadth must be "substantial" before a statute regulating conduct will be invalidated on its face. In this regard, the court determined that the Oklahoma statute was not substantially overbroad, relying on prior interpretations by the state's attorney general and the state personnel board that restricted the scope of the statute to "partisan political activity."

Officials at the Kansas civil service board indicate that the board has not had occasion to construe the prohibition against "participating in politics" included within K.S.A. 1983 Supp. 74-2113(e) [as amended]. Neither has this office had occasion to construe or limit the application of said statute. However, the West Virginia Supreme Court, in interpreting a state statute generally proscribing "political activity," which statute had not been limited by any administrative interpretation, held that the statute only proscribed those political activities, the limitation of which the U.S. Supreme Court had decided was constitutionally permissible and included within the federal Hatch Act. *Weaver v. Schaffer*, 290 S.E.2d 244 (W.Va. Sup. Ct. 1980). In our judgment, K.S.A. 1983 Supp. 74-2113(e) [as amended] should be interpreted as prohibiting the same political activities as the statute which was construed in the *Weaver* case. In this regard, the following activities were held to be prohibited in *Weaver*: (1) holding a party office; (2) working at the polls; (3) acting as a party paymaster for other party workers; (4) organizing a political party or club; (5) actively participating in fund-raising activities for a partisan candidate or political party; (6) becoming a partisan candidate for, or campaigning for, an elective public office; (7) actively managing the campaign of a partisan candidate for public office; (8) initiating or circulating a partisan nominating petition or soliciting votes (*i.e.*, campaigning) for a partisan candidate for public office; (9) serving as a delegate, alternate or a proxy to a political party convention.

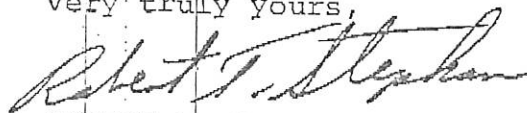
In response to your specific questions, and in accordance with the above-cited authorities, it is our opinion that the members of the Highway Patrol:

1. May be members of political clubs, but not officers of said clubs or members of a committee of such a club;

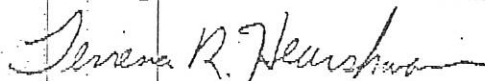
Bert Cantwell
Page Four

2. May not work as a volunteer for a partisan candidate, but may work as a volunteer for a non-partisan candidate for public office;
3. May put a political sign in their yards;
4. May place a candidate's bumper sticker on their personal automobiles;
5. May contribute money to a candidate's campaign committee, but may not engage in fund-raising activities for a partisan candidate;
6. May be a candidate in a nonpartisan contest for city council or school board;
7. May not be a partisan candidate for a political office, even if they take a leave of absence without pay prior to filing for the office, with the understanding they would either resign or come back to work once the outcome of the election is known;
8. May attend a political rally when on an off-duty status, provided the member does not engage in any prohibited activity at said rally.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General

RTS:BJS:TRH:jm

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OFFICE OF THE GOVERNOR

MEMORANDUM

TO: Cabinet Secretaries
FROM: Governor Bill Graves *BG*
DATE: July 15, 1998
SUBJECT: Political Activity by State Officers and Employees

Due to the upcoming election season, I want to ensure that all officers and employees of the state are aware of what is appropriate political activity. K.S.A. 75-2953, an act concerning political activity by state officers and employees, states:

- (a) No officer, agent, clerk or employee of this state shall directly or indirectly use their authority or official influence to compel any officer or employee in the unclassified and the classified services to apply for membership in or become a member of any organization, or to pay or promise to pay any assessment, subscription or contribution, or take part in any political activity. Any person who violates any provisions of this section shall be guilty of a class C misdemeanor, and, upon conviction, shall be punished accordingly. If any officer or employee in the classified service is found guilty of violating any provision of this section, such officer or employee shall be automatically separated from the service.
- (b) Any officer or employee in the state classified service shall resign from the service prior to taking the oath of office for a state elective office.

Additional prohibitions apply to members of the Kansas Highway Patrol (K.S.A. 74-2113) and to employees engaged in the administration of the Employment Security Act (K.S.A. 44-714 (c)(2)).

Employees should be careful to follow the provisions of the law that apply to them. If there is doubt that an act is appropriate, employees should either avoid the act or seek an appropriate legal opinion in advance. The following guidelines are suggested in order to conform with state law and to avoid any question of impropriety:

1. Supervisors or members of their immediate families should not solicit for political contributions or participation in political activities from classified or unclassified employees under their supervision.

2. Solicitation for political contributions or political activities should not occur on state property or during regular hours of employment.
3. To the extent solicitations for funds or activities are lawful and appropriate, they should not be made with expressed or implied offers of special favor or threats of penalty.
4. Campaign literature or other paraphernalia should not be brought onto state property or transported in or displayed on state vehicles.

Within the confines of K.S.A. 74-2113 (members of the Kansas Highway Patrol) and K.S.A. 44-714(c)(2) (employees engaged in administration of the Employment Security Act), state employees have the latitude to engage in the following political activities on their own time and in places other than their place of employment:

1. Be a member of the political party of their choice.
2. Actively engage in campaigning for the party and candidates of their choice.
3. Contribute to the political party and candidates of their choice.
4. Solicit funds for the political party and candidates of their choice.

All employees should be encouraged to register to vote and vote in all elections for which they qualify.

Please ensure that all officers and employees are made aware of this information concerning appropriate political activity.

BG:PAP:dp