Approved: March 21, 2001
Date

MINUTES OF THE SENATE ELECTIONS AND LOCAL GOVERNMENT COMMITTEE.

The meeting was called to order by Chairperson Barbara P. Allen at 1:30 p.m. on March 7, 2001 in Room 245-N of the Capitol.

All members were present except:

Committee staff present: Mike Heim, Kansas Legislative Research Department
Dennis Hodgins, Kansas Legislative Research Department
Ken Wilke, Office of the Revisor of Statutes
Nancy Kirkwood, Committee Secretary

Conferees appearing before the committee: Representative Loyd
Jerry Davis, County Commissioner, Garden City, KS
David Comstock, Director, Division of Engineering and Design, KDOT
Representative Pottorff
Harriet Lange, President & Executive Director, KS Association of Broadcasters
John Lewis, President, Kansas Sunshine coalition for Open Government
Richard Cram, Director of Policy and Research, Kansas Department of Revenue
Jeff Burkhead, Executive Director, Kansas Press Association, Inc.
Janet Schalansky, Secretary, Social Rehabilitation Services
Albert Murray, Commissioner, Juvenile Justice Authority
Tim Madden, Chief Legal Counsel, Department of Corrections
Clint Riley, Legal Counsel, KS Dept. of Wildlife & Parks
Connie L. Hubbell, Secretary, Kansas Department on Aging

Others attending: See attached list.

Chairperson Allen distributed an article regarding a hospital board missed election (Attachment 1).

Mike Heim, Legislative Research, passed out the hatch act provision regarding **SB 314-concerning the KS highway patrol, relating to restrictions on certain activity**. Chairperson Allen requested the information after committee inquiry; regarding how taking action on **SB 314** would interfere with hatch act provision (Attachment 2).

Hearings on:

HB 2246 - drainage districts, powers and duties of governing body

Ken Wilke, Revisor of Statutes, explained **HB 2246** to the committee.

Representative Loyd appeared before the committee in support of **HB 2246** (Attachment 3).

Testimony in support of **HB 2246** was given by Jerry Davis, County Commissioner, Garden City, Kansas (Attachment 4).

David Comstock, Director, Division of Engineering and Design, KDOT, testified before the committee in opposition of **HB 2246** (Attachment 5).

Chairperson Allen requested Dave Comstock to meet with Representative Loyd on the concerns he had regarding **HB 2246.**

HB 2299 - advisory committees; open meetings

March 7, 2001

Representative Pottorff testified in support of **HB 2299** (Attachment 6).

Harriet Lange, President and Executive Director, Kansas Association of Broadcasters presented testimony in support of **HB 2299** (Attachment 7).

John Lewis, President, Kansas Sunshine Coalition for Open Government, testified before the Committee in support of **HB 2299** (Attachment 8).

Written testimony in support of **HB 2299** was submitted by Jeff Burkhead, Executive Director, Kansas Press Association, Inc. (Attachment 9).

Richard Cram, Director of Policy and Research, Kansas Department of Revenue, spoke in opposition to **HB 2299** (Attachment 10).

Tim Madden, Chief Legal Counsel, appeared before the committee in opposition to **HB 2299** (Attachment 11).

Clint Riley, Legal Counsel, Kansas Department of Wildlife and Parks, testified before the Committee in opposition of **HB 2299** (Attachment 12).

Written testimony was distributed to committee in opposition of **HB 2299** by the following:
Janet Schalansky, Secretary, Social Rehabilitation Service(Attachment 13)
Albert Murray, Commissioner, Juvenile Justice Authority (Attachment 14)
Jamie Clover Adams, Secretary, Kansas Department of Agriculture (Attachment 15)
Connie L. Hubbell, Secretary, Kansas Department on Aging (Attachment 16).

Chairperson Allen informed the committee it would be meeting tomorrow to hear **HB 2185 - improvement district; revenue bonds, maturity**, and take possible action on bills previously heard.

The meeting adjourned at 2:30 p.m.

The next meeting is scheduled for March 8, 2001.

SENATE
ELECTIONS AND LOCAL GOVERNMENT
GUEST LIST

Date March 7, 2001

Jerry M Davis	Finney Co Commission
Tim Maddon	Ks Dept of Corrections
Chuck Bredahl	Adjutant General's Dept.
Brent Vidick	SRS
Bob North	DOA
Kevin Cowan	Gilmore & Bell
Richard Crem	KDOR
ROY LEE TREANOR	REP
Sheli Sweeney	KDOA

Attorney explains election situation

By Rosalie Ross

Rawlins County Health Center's attorney, Scott Beims, explained circumstances of a missed election to the board during their regular meeting Feb. 26.

"We missed the board election last November is what it boils down to," Beims said. "There were supposed to be six positions open."

Beims said he believed the error occurred because it was the first election since changing from April to November elections.

When he called the attorney general's office, he was referred to the election specialist who said there is no provision in the law to take care of this situation. Because technically there is no vacancy, electors will be required to wait four years to hold a hospital board election.

"We've talked about reducing the number on the board from nine to seven members," Beims said. "If two members choose to resign, this might be a good time to do it."

Chairman Ron Bell said he didn't feel nine was an unmanageable number for the board, instead it adds two more voices with ideas. He suggested the board size question be added to the April agenda.

Bell also told the group during their reorganizational session he no longer wished to serve as chairman.

"I have needed to be away a great deal because of my wife's health," Bell said. "She is making wonderful progress and I am beginning to feel comfortable leaving her alone, but I think it is time for someone else to take over chairmanship."

Attorney Beims complimented Bell on his service to the hospital.

"I want to congratulate Ron Bell, who has worked hard to unify this board," he said. "Ron has made a great contribution; in fact, he's probably one of the reasons we still have a hospital."

Phil Studer was elected chairman, Ron Beims vice chairman, Violet Beims secretary and H.G. Easterday treasurer.

The group appointed Sandy Studer recording secretary, Scott Beims attorney and reappointed Violet Beims, LeRoy Luedders, Phil Studer and Lonnie Frick to the hospital foundation board.

Administrator Don Kessen told the board the financials were considerably better than last month.

"We have had an increased inpatient census, the emergency room and consultants have been extremely busy and there has been increased activity in lab and x-ray," Kessen said.

The board voted to extend the concrete on the east truck entrance so the mobile units can have electrical hook-ups and expanded wheelchair areas. The county will remove some of the chips and add tubing to expand the truck entrance.

Sandy Kuhlman will meet with Kessen March 4 to discuss Rawlins County Hospice. The board voted to allow Hospice up to two rooms for patient care if the situation arises.

"Because we are a critical access hospital, we can charge them for a room," Kessen said.

A bone density mobile unit will be coming out of Topeka on a regular monthly basis. It is capable of a ful body scan offering doctors a better disgnostic tool.

A member of the Jones-Gilliam firm interviewed department heads and board members as part of his analysis of space usage for building. He will review the suggestion of possible space for two assisted living apartments on the south wing.

Board members H.G. Easterday, LeRoy Luedders, Jim Begley, Violet Beims, Ron Beims, Phil Studer and Ron Bell were present.

Sen. Elec + Loc. Gov
03-07-01
Attachment 1

75-2953. Use of authority or official influence to compel state officer or employee to apply for or become member of organization, pay or promise to pay assessment or contribution or take part in political activity; penalty for violation; officer or employee in classified service to resign prior to taking oath for state elective office. (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 to 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.

History: L. 1941, ch. 358, § 29; L. 1969, ch. 401, § 1; L. 1975, ch. 439, § 1; L. 1978, ch. 346, § 1; L. 1984, ch. 315, § 1; L. 1986, ch. 319, § 1; L. 1991, ch. 150, § 41; L. 1996, ch. 197, § 1; May 16.

75-2974. Campaign contributions by classified state employees; solicitation by supervisors; provision of employee mailing lists for political purposes; prohibiting disciplinary action for voluntary contributions; enforcement; civil penalties. (a) No supervising official shall solicit any contribution to or on behalf of any state officer or candidate for state office from any state employee under the supervision of such supervising official.

(b) The director of the division of personnel services is prohibited from giving any list of names and residence addresses of state employees to any person knowing that such list will be used for the purpose of soliciting contributions from, or mailing political campaign literature or advertising to, such state employees.

(c) No state employee who lawfully, willingly and voluntarily makes a contribution to or on behalf of any state officer or candidate for state office shall be dismissed, demoted, suspended or subjected to any other disciplinary action because of the making of such contribution.

(d) Violations of this section shall be enforced by the attorney general or a county or district attorney in the county in which the violation took place. Violations of this section shall be punishable by a civil penalty of up to $2,500 per violation.

(e) As used in this section:

(1) "State employee" means any person holding a position in the classified service under the Kansas civil service act; and

(2) "contribution" has the meaning ascribed thereto in the campaign finance act.

History: L. 1988, ch. 331, § 4; July 1.

Cross References to Related Sections:

Unlawful use of authority, influencing political activity of state classified personnel, see 75-2953.

Attorney General's Opinions:

Employment security law; administration of act; political activities prohibited; penalties. 90-109.

Kansas racing commission; political activities. 90-111.

Senate Elec + Loc. Gov
03-07-01

Attachment 2

HISTORICAL AND REVISION NOTES—Continued

Derivation	U.S. Code	Revised Statutes and Statutes at Large
(a)(2)	5 U.S.C. 2121 (less 1st 29 words).	Sept. 1, 1954, ch. 1208, § 302 (less 1st 29 words), 68 Stat. 1112.
(a)(3)	5 U.S.C. 1181(c).	Aug. 25, 1950, ch. 784, § 1 "Sec. 9(c)", 64 Stat. 475.
(a)(4)	5 U.S.C. 2317(b).	July 7, 1958, Pub. L. 85-507, § 18(b), 72 Stat. 336.
(b)	5 U.S.C. 2317(c).	July 7, 1958, Pub. L. 85-507, § 18(c), 72 Stat. 336.
(c)	5 U.S.C. 2266(f).	July 31, 1956, ch. 804, § 401 "Sec. 16(f)", 70 Stat. 759.
(d)	5 U.S.C. 2102 (less applicability to 5 U.S.C. 2099).	Aug. 17, 1954, ch. 752, § 13 (less applicability to § 10) 68 Stat. 743.
(e)	5 U.S.C. 3011.	Sept. 28, 1959, Pub. L. 86-382, § 12, 73 Stat. 716.

In subsection (a)(1), the requirement of reasons for exceptions to the civil service rules and regulations is added on authority of former section 633(2)8 (last sentence), which is carried into section 3302.

In subsection (b), the words "for his approval" are omitted as unnecessary because the President has the inherent power, based on the Constitutional separation of powers, to approve or disapprove such a report.

Standard charges are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

REFERENCES IN TEXT

The Office, referred to in text, is the Office of Personnel Management.

AMENDMENTS

1980—Subsec. (a). Pub. L. 96-470 redesignated subsec. (c) as (a) and struck out former subsec. (a) which required the Office of Personnel Management to make an annual report to the President for transmittal to Congress on the Office's actions in the administration of the competitive service, the rules and regulations and exceptions to the rules and regulations, with reasons for the exceptions, in force, the practical effect of the rules and regulations, recommendations for better administration of the competitive service, results of the incentive awards program authorized by chapter 45 of this title, the names, addresses, and nature of employment of individuals on whom the Merit Systems Protection Board has imposed a penalty for prohibited political activity under section 7325 of this title, and a statement on the training of employees under chapter 41 of this title.

Subsec. (b). Pub. L. 96-470 redesignated subsec. (d) as (b) and struck out former subsec. (b) which required the Office of Personnel Management to provide annually to Congress an analysis of the administration and operation of chapter 41 of this title.

Subsecs. (c) to (e). Pub. L. 96-470 redesignated subsecs. (c) to (e) as (a) to (c), respectively.

1979—Subsec. (a)(3). Pub. L. 96-54 substituted "Merit Systems Protection Board" for "Office".

1978—Subsecs. (a) to (e). Pub. L. 95-454 substituted "Office of Personnel Management" and "Office" for "Civil Service Commission" and "Commission", respectively, wherever appearing.

1973—Subsec. (b). Pub. L. 93-156 substituted requirement that Commission provide annually an analysis to Congress of the administration and operation of chapter 41 of this title, for prior requirement that Commission report annually to the President for transmittal to Congress on the administration of chapter 41 of this title, including the information received by the Commission from the agencies under section 4113(b)(2) and (3) of this title.

1969—Subsec. (c). Pub. L. 91-93 struck out "on a normal cost plus interest basis" after "Fund".

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-54 effective July 12, 1979, see section 2(b) of Pub. L. 96-54, set out as a note under section 305 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3407, 4705 of this title.

CHAPTER 15—POLITICAL ACTIVITY OF CERTAIN STATE AND LOCAL EMPLOYEES

AMENDMENTS

1974—Pub. L. 93-443, title IV, § 401(b)(2), Oct. 15, 1974, 88 Stat. 1290, substituted "candidacies" for "political activity" in item 1503.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1212, 1215, 1216, 1302, 4703 of this title; title 23 section 142; title 42 sections 2996e, 3056, 4728, 9851.

§ 1501. Definitions

For the purpose of this chapter—

(1) "State" means a State or territory or possession of the United States;

(2) "State or local agency" means the executive branch of a State, municipality, or other political subdivision of a State, or an agency or department thereof;

(3) "Federal agency" means an Executive agency or other agency of the United States, but does not include a member bank of the Federal Reserve System; and

(4) "State or local officer or employee" means an individual employed by a State or local agency whose principal employment is in connection with an activity which is financed in whole or in part by loans or grants made by the United States or a Federal agency, but does not include—

(A) an individual who exercises no functions in connection with that activity; or

(B) an individual employed by an educational or research institution, establishment, agency, or system which is supported in whole or in part by a State or political subdivision thereof, or by a recognized religious, philanthropic, or cultural organization.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 403; Pub. L. 93-443, title IV, § 401(c), Oct. 15, 1974, 88 Stat. 1290.)

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1979 AMENDMENT

54 effective July 12, 1979, 96-54, set out as a note

1978 AMENDMENT

154 effective 90 days after of Pub. L. 95-454, set out of this title.

IN OTHER SECTIONS

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403; Pub. 1974, 88

HISTORICAL AND REVISION NOTES

Derivation	U.S. Code	Revised Statutes and Statutes at Large
(1)	5 U.S.C. 118k-2.	July 19, 1940, ch. 640, § 4 "Sec. 19", 54 Stat. 772.
(2), (3)	5 U.S.C. 118k(f).	July 19, 1940, ch. 640, § 4 "Sec. 12(f)", 54 Stat. 770.
(4)	5 U.S.C. 118k(a) (1st 41 words), (e).	July 19, 1940, ch. 640, § 4 "Sec 12(a) (1st 41 words), (e)", 54 Stat. 767, 770.
	5 U.S.C. 118k-1 (as applicable to 5 U.S.C. 118k).	Oct. 24, 1942, ch. 620 "Sec. 21 (as applicable to § 12 of the Act of Aug. 2, 1939; added July 19, 1940, ch. 640, § 4, 54 Stat. 767)", 56 Stat. 986.
(5)	5 U.S.C. 118l (as applicable to 5 U.S.C. 118k).	July 19, 1940, ch. 640, § 4 "Sec. 15 (as applicable to § 12 of the Act of Aug. 2, 1939; added July 19, 1940, ch. 640, § 4, 54 Stat. 767)", 54 Stat. 771.

In paragraph (4)(B), the words "or by any Territory or Territorial possession of the United States" are omitted in view of the definition of "State" in paragraph (1).

In paragraph (5), the words "July 19, 1940" are substituted for "at the time this section takes effect".

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1974—Par. (5). Pub. L. 93-443 struck out par. (5) which defined "an active part in political management or in political campaigns".

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-443 effective Jan. 1, 1975, see section 410(a) of Pub. L. 93-443, set out as a note under section 431 of Title 2, The Congress.

CROSS REFERENCES

Political activities of certain Federal employees and employees of the government of the District of Columbia, see section 7321 et seq. of this title.

§ 1502. Influencing elections; taking part in political campaigns; prohibitions; exceptions

(a) A State or local officer or employee may not—

(1) use his official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for office;

(2) directly or indirectly coerce, attempt to coerce, command, or advise a State or local officer or employee to pay, lend, or contribute anything of value to a party, committee, organization, agency, or person for political purposes; or

(3) be a candidate for elective office.

(b) A State or local officer or employee retains the right to vote as he chooses and to express his opinions on political subjects and candidates.

(c) Subsection (a)(3) of this section does not apply to—

(1) the Governor or Lieutenant Governor of a State or an individual authorized by law to act as Governor;

(2) the mayor of a city;

(3) a duly elected head of an executive department of a State or municipality who is not classified under a State or municipal merit or civil-service system; or

(4) an individual holding elective office.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 404; Pub. L. 93-443, title IV, § 401(a), Oct. 15, 1974, 88 Stat. 1290.)

HISTORICAL AND REVISION NOTES

Derivation	U.S. Code	Revised Statutes and Statutes at Large
	5 U.S.C. 118k(a) (less 1st 41 words).	July 19, 1940, ch. 640, § 4 "Sec. 12(a) (less 1st 41 words)", 54 Stat. 767.

In subsection (a), the term "State or local officer or employee", defined in section 1501, is substituted for the first 41 words of former section 118k(a). The words "any part of his salary or compensation" are omitted as included in "anything of value".

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1974—Subsec. (a)(3). Pub. L. 93-443 substituted "be a candidate for elective office" for "take an active part in political management or in political campaigns".

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-443 effective Jan. 1, 1975, see section 410(a) of Pub. L. 93-443, set out as a note under section 431 of Title 2, The Congress.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1503, 1504, 1505, 1506 of this title; title 42 section 9851.

§ 1503. Nonpartisan candidacies permitted

Section 1502(a)(3) of this title does not prohibit any State or local officer or employee from being a candidate in any election if none of the candidates is to be nominated or elected at such election as representing a party any of whose candidates for Presidential elector received votes in the last preceding election at which Presidential electors were selected.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 404; Pub. L. 93-443, title IV, § 401(b)(1), Oct. 15, 1974, 88 Stat. 1290.)

HISTORICAL AND REVISION NOTES

Derivation	U.S. Code	Revised Statutes and Statutes at Large
	5 U.S.C. 118n (as applicable to 5 U.S.C. 118k(a)).	July 19, 1940, ch. 640, § 4 "Sec. 18 (as applicable to § 12 of the Act of Aug. 2, 1939; added July 19, 1940, ch. 640, § 4, 54 Stat. 767)", 54 Stat. 772.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1974—Pub. L. 93-443 substituted "candidacies" for "political activity" in section catchline and provision permitting nonpartisan candidacies for prior provision permitting political activity in connection with (1) an election and the preceding campaign if none of the

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candidates was to be nominated or elected at that election as representing a party any of whose candidates for presidential elector received votes in the last preceding election at which presidential electors were selected, or (2) a question which was not specifically identified with a National or State political party and deeming questions relating to constitutional amendments, referendums, approval of municipal ordinances, and others of a similar character as not specifically identified with a National or State political party.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-443 effective Jan. 1, 1975, see section 410(a) of Pub. L. 93-443, set out as a note under section 431 of Title 2, The Congress.

§ 1504. Investigations; notice of hearing

When a Federal agency charged with the duty of making a loan or grant of funds of the United States for use in an activity by a State or local officer or employee has reason to believe that the officer or employee has violated section 1502 of this title, it shall report the matter to the Special Counsel. On receipt of the report or on receipt of other information which seems to the Special Counsel to warrant an investigation, the Special Counsel shall investigate the report and such other information and present his findings and any charges based on such findings to the Merit Systems Protection Board, which shall—

(1) fix a time and place for a hearing; and

(2) send, by registered or certified mail, to the officer or employee charged with the violation and to the State or local agency employing him a notice setting forth a summary of the alleged violation and giving the time and place of the hearing.

The hearing may not be held earlier than 10 days after the mailing of the notice.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 405; Pub. L. 95-454, title IX, § 906(a)(7), Oct. 13, 1978, 92 Stat. 1225.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 118k(b) (1st and 2d sentences, and 4th through 17th words of 3d sentence).	July 19, 1940, ch. 640 § 4 "Sec. 12(b) (1st and 2d sentences, and 4th through 17th words of 3d sentence)", 54 Stat. 768. June 11, 1960, Pub. L. 86-507, § 1(1), 74 Stat. 200.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1978—Pub. L. 95-454 substituted provisions respecting the functions of the Special Counsel and the Merit Systems Protection Board for provisions respecting the functions of the Civil Service Commission.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1505, 1508 of this title.

§ 1505. Hearings; adjudications; notice of determinations

Either the State or local officer or employee or the State or local agency employing him, or both, are entitled to appear with counsel at the hearing under section 1504 of this title, and be heard. After this hearing, the Merit Systems Protection Board shall—

(1) determine whether a violation of section 1502 of this title has occurred;

(2) determine whether the violation warrants the removal of the officer or employee from his office or employment; and

(3) notify the officer or employee and the agency of the determination by registered or certified mail.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 405; Pub. L. 95-454, title IX, § 906(a)(6), Oct. 13, 1978, 92 Stat. 1225.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 118k(b) (3d sentence, less 4th, through 17th words, and 4th sentence).	July 19, 1940, ch. 640, § 4 "Sec. 12(b) (3d sentence, less 4th through 17th words, and 4th sentence)", 54 Stat. 768. June 11, 1960, Pub. L. 86-507, § 1(1), 74 Stat. 200.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1978—Pub. L. 95-454 substituted "Merit Systems Protection Board" for "Civil Service Commission".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1508 of this title.

§ 1506. Orders; withholding loans or grants; limitations

(a) When the Merit Systems Protection Board finds—

(1) that a State or local officer or employee has not been removed from his office or employment within 30 days after notice of a determination by the Board that he has violated section 1502 of this title and that the violation warrants removal; or

(2) that the State or local officer or employee has been removed and has been appointed within 18 months after his removal to an office or employment in the same State in a State or local agency which does not receive loans or grants from a Federal agency;

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the Board shall make and certify to the appropriate Federal agency an order requiring that agency to withhold from its loans or grants to the State or local agency to which notice was given an amount equal to 2 years' pay at the rate the officer or employee was receiving at the time of the violation. When the State or local agency to which appointment within 18 months after removal has been made is one that receives loans or grants from a Federal agency, the Board order shall direct that the withholding be made from that State or local agency.

(b) Notice of the order shall be sent by registered or certified mail to the State or local agency from which the amount is ordered to be withheld. After the order becomes final, the Federal agency to which the order is certified shall withhold the amount in accordance with the terms of the order. Except as provided by section 1508 of this title, a determination of order of the Board becomes final at the end of 30 days after mailing the notice of the determination or order.

(c) The Board may not require an amount to be withheld from a loan or grant pledged by a State or local agency as security for its bonds or notes if the withholding of that amount would jeopardize the payment of the principal or interest on the bonds or notes.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 405; Pub. L. 95-454, title IX, § 906(a)(6), Oct. 13, 1978, 92 Stat. 1225.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 118k(b) (less 1st 4 sentences).	July 19, 1940, ch. 640, § 4 "Sec. 12(b) (less 1st 4 sentences)", 54 Stat. 768. June 11, 1960, Pub. L. 86-507, § 1(1), 74 Stat. 200.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-454 substituted "Merit Systems Protection Board" for "Civil Service Commission" and "Board" for "Commission", respectively, wherever appearing.

Subsecs. (b), (c). Pub. L. 95-454 substituted "Board" for "Commission".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1508 of this title.

§ 1507. Subpenas and depositions

(a) The Merit Systems Protection Board may require by subpena the attendance and testimony of witnesses and the production of documentary evidence relating to any matter before it as a result of this chapter. Any member of the Board may sign subpenas, and members of the Board and its examiners when authorized by the Board may administer oaths, examine witnesses, and receive evidence. The attendance of witnesses and the production of documentary evidence may be required from any place in the United States at the designated place of hearing. In case of disobedience to a subpena, the Board may invoke the aid of a court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence. In case of contumacy or refusal to obey a subpena issued to a person, the United States District Court within whose jurisdiction the inquiry is carried on may issue an order requiring him to appear before the Board, or to produce documentary evidence if so ordered, or to give evidence concerning the matter in question; and any failure to obey the order of the court may be punished by the court as a contempt thereof.

(b) The Board may order testimony to be taken by deposition at any stage of a proceeding or investigation before it as a result of this chapter. Depositions may be taken before an individual designated by the Board and having the power to administer oaths. Testimony shall be reduced to writing by the individual taking the deposition, or under his direction, and shall be subscribed by the deponent. Any person may be compelled to appear and depose and to produce documentary evidence before the Board as provided by this section.

(c) A person may not be excused from attending and testifying or from producing documentary evidence or in obedience to a subpena on the ground that the testimony or evidence, documentary or otherwise required of him may tend to incriminate him or subject him to a penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled to testify, or produce evidence, documentary or otherwise, before the Board in obedience to a subpena issued by it. A person so testifying is not exempt from prosecution and punishment for perjury committed in so testifying.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 406; Pub. L. 95-454, title IX, § 906(a)(6), Oct. 13, 1978, 92 Stat. 1225.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 118k(d) (less 1st sentence).	July 19, 1940, ch. 640, § 4 "Sec. 12(d) (less 1st sentence)", 54 Stat. 769.

In subsection (a), the word "affirmation" is omitted as included in "oath" on authority of section 1 of title 1, United States Code. The title of the court is changed to conform to title 28.

In subsection (c), the prohibition is restated in positive form.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-454 substituted "Merit Systems Protection Board" and "Board" for "Civil

Service Commission" and "Commission", respectively, wherever appearing.

Subsecs. (b), (c). Pub. L. 95-454 substituted "Board" for "Commission" wherever appearing.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

§ 1508. Judicial review

A party aggrieved by a determination or order of the Merit Systems Protection Board under section 1504, 1505, or 1506 of this title may, within 30 days after the mailing of notice of the determination or order, institute proceedings for review thereof by filing a petition in the United States District Court for the district in which the State or local officer or employee resides. The institution of the proceedings does not operate as a stay of the determination or order unless—

(1) the court specifically orders a stay; and

(2) the officer or employee is suspended from his office or employment while the proceedings are pending.

A copy of the petition shall immediately be served on the Board, and thereupon the Board shall certify and file in the court a transcript of the record on which the determination or order was made. The court shall review the entire record including questions of fact and questions of law. If application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the court that the additional evidence may materially affect the result of the proceedings and that there were reasonable grounds for failure to adduce this evidence in the hearing before the Board, the court may direct that the additional evidence be taken before the Board in the manner and on the terms and conditions fixed by the court. The Board may modify its findings of fact or its determination or order in view of the additional evidence and shall file with the court the modified findings, determination, or order; or the modified findings of fact, if supported by substantial evidence, are conclusive. The court shall affirm the determination or order, or the modified determination or order, if the court determines that it is in accordance with law. If the court determines that the determination or order, or the modified determination or order, is not in accordance with law, the court shall remand the proceeding to the Board with directions either to make a determination or order determined by the court to be lawful or to take such further proceedings as, in the opinion of the court, the law requires. The judgment and decree of the court are final, subject to review by the appropriate United States Court of Appeals as in other cases, and the judgment and decree of the court of appeals are final, subject to review by the Supreme Court of the United States on certiorari or certification as provided by section 1254 of title 28. If a provision of this section is held to be invalid as applied to a party by a determination or order of the Board, the determination or order becomes final and effective as to that party as if the provision had not been enacted.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 406; Pub. L. 95-454, title IX, § 906(a)(6), Oct. 13, 1978, 92 Stat. 1225.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 118k(c).	July 19, 1940, ch. 640, § 4 "Sec. 12(c)", 54 Stat. 768.

Sections 346 and 347 of title 28 referred to in former section 118k(c) were repealed by the Act of June 25, 1948, ch. 646, § 39, 62 Stat. 862, and are now covered by section 1254 of title 28. The titles of the courts are changed to conform to title 28.

In the reference to filing a written petition, "written" is omitted as unnecessary.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1978—Pub. L. 95-454 substituted "Merit Systems Protection Board" and "Board" for "Civil Service Commission" and "Commission", respectively, wherever appearing.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1506 of this title.

PART III—EMPLOYEES

Subpart A—General Provisions

Subpart B—Employment and Retention

Subpart C—Employee Performance

Subpart D—Pay and Allowances

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REQUIREMENTS FOR
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RICHARD NIXON.

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§ 7312. Employment and clearance; individuals removed for national security

Removal under section 7532 of this title does not affect the right of an individual so removed to seek or accept employment in an agency of the United States other than the agency from which removed. However, the appointment of an individual so removed may be made only after the head of the agency concerned has consulted with the Office of Personnel Management. The Office, on written request of the head of the agency or the individual so removed, may determine whether the individual is eligible for employment in an agency other than the agency from which removed.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 524; Pub. L. 95-454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 22-1 (4th and 5th provisos).	Aug. 26, 1950, ch. 803, § 1 (4th and 5th provisos), 64 Stat. 477.

The words "Removal under section 7532 of this title" and "so removed" are coextensive with and substituted for "termination of employment herein provided" and "whose employment has been terminated under the provisions of said sections", respectively.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1978—Pub. L. 95-454 substituted "Office of Personnel Management" and "Office" for "Civil Service Commission" and "Commission", respectively.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

§ 7313. Riots and civil disorders

(a) An individual convicted by any Federal, State, or local court of competent jurisdiction of—

(1) inciting a riot or civil disorder;

(2) organizing, promoting, encouraging, or participating in a riot or civil disorder;

(3) aiding or abetting any person in committing any offense specified in clause (1) or (2); or

(4) any offense determined by the head of the employing agency to have been committed in furtherance of, or while participating in, a riot or civil disorder;

shall, if the offense for which he is convicted is a felony, be ineligible to accept or hold any position in the Government of the United States or in the government of the District of Columbia for the five years immediately following the date upon which his conviction becomes final. Any such individual holding a position in the Government of the United States or the government of the District of Columbia on the date his conviction becomes final shall be removed from such position.

(b) For the purposes of this section, "felony" means any offense for which imprisonment is authorized for a term exceeding one year.

(Added Pub. L. 90-351, title V, § 1001(a), June 19, 1968, 82 Stat. 235.)

EFFECTIVE DATE

Section 1002 of Pub. L. 90-351 provided that: "The provisions of section 1001(a) of this title [enacting this section] shall apply only with respect to acts referred to in section 7313(a)(1)-(4) of title 5, United States Code, as added by section 1001 of this title, which are committed after the date of enactment of this title [June 19, 1968]."

RECEIPT OF BENEFITS UNDER LAWS PROVIDING RELIEF FOR DISASTER VICTIMS

Section 1106(e) of Pub. L. 90-448, title XI, Aug. 1, 1968, 82 Stat. 567, provided that: "No person who has been convicted of committing a felony during and in connection with a riot or civil disorder shall be permitted, for a period of one year after the date of his conviction, to receive any benefit under any law of the United States providing relief for disaster victims."

SUBCHAPTER III—POLITICAL ACTIVITIES

AMENDMENTS

1993—Pub. L. 103-94, § 2(a), Oct. 6, 1993, 107 Stat. 1001, reenacted subchapter heading without change.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1212, 1216, 4703, 7103, 7121 of this title; title 22 section 4102; title 31 section 732; title 42 sections 1973d, 5055.

§ 7321. Political participation

It is the policy of the Congress that employees should be encouraged to exercise fully, freely, and without fear of penalty or reprisal, and to the extent not expressly prohibited by law, their right to participate or to refrain from participating in the political processes of the Nation.

(Added Pub. L. 103-94, § 2(a), Oct. 6, 1993, 107 Stat. 1001.)

PRIOR PROVISIONS

A prior section 7321, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 525, related to political contributions and services of employees in Executive agencies or competitive service, prior to the general revision of this subchapter by Pub. L. 103-94.

EFFECTIVE DATE; SAVINGS PROVISION

Section 12 of Pub. L. 103-94 provided that:

"(a) The amendments made by this Act [enacting sections 5520a and 7321 to 7326 of this title and section 610 of Title 18, Crimes and Criminal Procedure, amending sections 1216, 2302, 3302 and 3303 of this title, sections 602 and 603 of Title 18, section 410 of Title 39, Postal Service, and sections 1973d and 9904 of Title 42, The Public Health and Welfare, and omitting former sections 7321 to 7328 of this title] shall take effect 120 days after the date of the enactment of this Act [Oct. 6, 1993], except that the authority to prescribe regulations granted under section 7325 of title 5, United States Code (as added by section 2 of this Act), shall take effect on the date of the enactment of this Act.

"(b) Any repeal or amendment made by this Act of any provision of law shall not release or extinguish any penalty, forfeiture, or liability incurred under

that provision, and that provision shall be treated as remaining in force for the purpose of sustaining any proper proceeding or action for the enforcement of that penalty, forfeiture, or liability.

"(c) No provision of this Act shall affect any proceedings with respect to which the charges were filed on or before the effective date of the amendments made by this Act. Orders shall be issued in such proceedings and appeals shall be taken therefrom as if this Act had not been enacted."

DELEGATION OF AUTHORITY

Memorandum of President of the United States, Oct. 27, 1994, 59 F.R. 54515, provided:

Memorandum for the Secretary of Defense

Pursuant to authority vested in me as the Chief Executive Officer of the United States, and consistent with the provisions of the Hatch Act Reform Amendment regulations, 5 CFR 734.104, and section 301 of title 3, United States Code, I delegate to you the authority to limit the political activities of political appointees of the Department of Defense, including Presidential appointees, Presidential appointees with Senate confirmation, noncareer SES appointees, and Schedule C appointees.

You are authorized and directed to publish this memorandum in the Federal Register.

WILLIAM J. CLINTON.

Memorandum of President of the United States, Oct. 24, 1994, 59 F.R. 54121, provided:

Memorandum for the Secretary of State

Pursuant to authority vested in me as the Chief Executive Officer of the United States, and consistent with the provisions of the Hatch Act Reform Amendment regulations, 5 CFR 734.104, and section 301 of title 3, United States Code, I delegate to you the authority to limit the political activities of political appointees of the Department of State, including Presidential appointees, Presidential appointees with Senate confirmation, noncareer SES appointees, and Schedule C appointees.

You are authorized and directed to publish this memorandum in the Federal Register.

WILLIAM J. CLINTON.

Memorandum of President of the United States, Sept. 30, 1994, 59 F.R. 50809, provided:

Memorandum for the Attorney General

Pursuant to authority vested in me as the Chief Executive Officer of the United States, and consistent with the provisions of the Hatch Act Reform Amendment regulations, 5 CFR 734.104, and section 301 of title 3, United States Code, I delegate to you the authority to limit the political activities of political appointees of the Department of Justice, including Presidential appointees, Presidential appointees with Senate confirmation, noncareer SES appointees, and Schedule C appointees.

You are authorized and directed to publish this memorandum in the Federal Register.

WILLIAM J. CLINTON.

§ 7322. Definitions

For the purpose of this subchapter—

(1) "employee" means any individual, other than the President and the Vice President, employed or holding office in—

(A) an Executive agency other than the General Accounting Office;

(B) a position within the competitive service which is not in an Executive agency; or

(C) the government of the District of Columbia, other than the Mayor or a member of the City Council or the Recorder of Deeds;

but does not include a member of the uniformed services;

(2) "partisan political office" means any office for which any candidate is nominated or elected as representing a party any of whose candidates for Presidential elector received votes in the last preceding election at which Presidential electors were selected, but shall exclude any office or position within a political party or affiliated organization; and

(3) "political contribution"—

(A) means any gift, subscription, loan, advance, or deposit of money or anything of value, made for any political purpose;

(B) includes any contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a contribution for any political purpose;

(C) includes any payment by any person, other than a candidate or a political party or affiliated organization, of compensation for the personal services of another person which are rendered to any candidate or political party or affiliated organization without charge for any political purpose; and

(D) includes the provision of personal services for any political purpose.

(Added Pub. L. 103-94, § 2(a), Oct. 6, 1993, 107 Stat. 1001.)

PRIOR PROVISIONS

A prior section 7322, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 525, prohibited employees in Executive agencies or competitive service from using official authority or influence to coerce political actions of persons or bodies, prior to the general revision of this subchapter by Pub. L. 103-94.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 18 sections 602, 603, 610.

§ 7323. Political activity authorized; prohibitions

(a) Subject to the provisions of subsection (b), an employee may take an active part in political management or in political campaigns, except an employee may not—

(1) use his official authority or influence for the purpose of interfering with or affecting the result of an election;

(2) knowingly solicit, accept, or receive a political contribution from any person, unless such person is—

(A) a member of the same Federal labor organization as defined under section 7103(4) of this title or a Federal employee organization which as of the date of enactment of the Hatch Act Reform Amendments of 1993 had a multicandidate political committee (as defined under section 315(a)(4) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(a)(4)));

(B) not a subordinate employee; and

(C) the solicitation is for a contribution to the multicandidate political committee (as defined under section 315(a)(4) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(a)(4))) of such Federal labor organization as defined under section 7103(4) of this title or a Federal employee organization which as of the date of the enactment of the Hatch Act Reform Amendments of

1993 had a multicandidate political committee (as defined under section 315(a)(4) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(a)(4))); or

(3) run for the nomination or as a candidate for election to a partisan political office; or

(4) knowingly solicit or discourage the participation in any political activity of any person who—

(A) has an application for any compensation, grant, contract, ruling, license, permit, or certificate pending before the employing office of such employee; or

(B) is the subject of or a participant in an ongoing audit, investigation, or enforcement action being carried out by the employing office of such employee.

(b)(1) An employee of the Federal Election Commission (except one appointed by the President, by and with the advice and consent of the Senate), may not request or receive from, or give to, an employee, a Member of Congress, or an officer of a uniformed service a political contribution.

(2)(A) No employee described under subparagraph (B) (except one appointed by the President, by and with the advice and consent of the Senate), may take an active part in political management or political campaigns.

(B) The provisions of subparagraph (A) shall apply to—

(i) an employee of—

(I) the Federal Election Commission;

(II) the Federal Bureau of Investigation;

(III) the Secret Service;

(IV) the Central Intelligence Agency;

(V) the National Security Council;

(VI) the National Security Agency;

(VII) the Defense Intelligence Agency;

(VIII) the Merit Systems Protection Board;

(IX) the Office of Special Counsel;

(X) the Office of Criminal Investigation of the Internal Revenue Service;

(XI) the Office of Investigative Programs of the United States Customs Service;

(XII) the Office of Law Enforcement of the Bureau of Alcohol, Tobacco, and Firearms; or

(XIII) the Central Imagery Office; or

(ii) a person employed in a position described under section 3132(a)(4), 5372, or 5372a of title 5, United States Code.

(3) No employee of the Criminal Division of the Department of Justice (except one appointed by the President, by and with the advice and consent of the Senate), may take an active part in political management or political campaigns.

(4) For purposes of this subsection, the term "active part in political management or in a political campaign" means those acts of political management or political campaigning which were prohibited for employees of the competitive service before July 19, 1940, by determinations of the Civil Service Commission under the rules prescribed by the President.

(c) An employee retains the right to vote as he chooses and to express his opinion on political subjects and candidates.

(Added Pub. L. 103-94, § 2(a), Oct. 6, 1993, 107 Stat. 1002; amended Pub. L. 103-359, title V, § 501(k), Oct. 14, 1994, 108 Stat. 3430.)

REFERENCES IN TEXT

The date of enactment of the Hatch Act Reform Amendments of 1993, referred to in subsec. (a)(2)(A), (C), is the date of enactment of Pub. L. 103-94, which was approved Oct. 6, 1993.

PRIOR PROVISIONS

A prior section 7323, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 525, prohibited employee in Executive agency from requesting, receiving from, or giving to, an employee, a Member of Congress, or an officer of a uniformed service, a thing of value for political purposes and provided for removal from service of employee for violation, prior to the general revision of this subchapter by Pub. L. 103-94.

AMENDMENTS

1994—Subsec. (b)(2)(B)(i)(XIII). Pub. L. 103-359 added subcl. (XIII).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7325, 7326 of this title; title 18 sections 602, 603.

§ 7324. Political activities on duty; prohibition

(a) An employee may not engage in political activity—

(1) while the employee is on duty;

(2) in any room or building occupied in the discharge of official duties by an individual employed or holding office in the Government of the United States or any agency or instrumentality thereof;

(3) while wearing a uniform or official insignia identifying the office or position of the employee; or

(4) using any vehicle owned or leased by the Government of the United States or any agency or instrumentality thereof.

(b)(1) An employee described in paragraph (2) of this subsection may engage in political activity otherwise prohibited by subsection (a) if the costs associated with that political activity are not paid for by money derived from the Treasury of the United States.

(2) Paragraph (1) applies to an employee—

(A) the duties and responsibilities of whose position continue outside normal duty hours and while away from the normal duty post; and

(B) who is—

(i) an employee paid from an appropriation for the Executive Office of the President; or

(ii) an employee appointed by the President, by and with the advice and consent of the Senate, whose position is located within the United States, who determines policies to be pursued by the United States in relations with foreign powers or in the nationwide administration of Federal laws.

(Added Pub. L. 103-94, § 2(a), Oct. 6, 1993, 107 Stat. 1003.)

PRIOR PROVISIONS

A prior section 7324, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 525; Pub. L. 93-268, § 4(a), Apr. 17, 1974, 88 Stat.

87, prohibited Executive agency employees and employees of the District of Columbia from influencing elections or taking part in political campaigns, prior to the general revision of this subchapter by Pub. L. 103-94.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7326 of this title; title 18 sections 602, 603; title 42 section 2000e-4; title 50 App. section 463.

§ 7325. Political activity permitted; employees residing in certain municipalities

The Office of Personnel Management may prescribe regulations permitting employees, without regard to the prohibitions in paragraphs (2) and (3) of section 7323(a) of this title, to take an active part in political management and political campaigns involving the municipality or other political subdivision in which they reside, to the extent the Office considers it to be in their domestic interest, when—

(1) the municipality or political subdivision is in Maryland or Virginia and in the immediate vicinity of the District of Columbia, or is a municipality in which the majority of voters are employed by the Government of the United States; and

(2) the Office determines that because of special or unusual circumstances which exist in the municipality or political subdivision it is in the domestic interest of the employees and individuals to permit that political participation.

(Added Pub. L. 103-94, § 2(a), Oct. 6, 1993, 107 Stat. 1004.)

PRIOR PROVISIONS

A prior section 7325, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 526; Pub. L. 96-54, § 2(a)(44), Aug. 14, 1979, 93 Stat. 384, related to penalties, prior to the general revision of this subchapter by Pub. L. 103-94.

§ 7326. Penalties

An employee or individual who violates section 7323 or 7324 of this title shall be removed from his position, and funds appropriated for the position from which removed thereafter may not be used to pay the employee or individual. However, if the Merit System Protection Board finds by unanimous vote that the violation does not warrant removal, a penalty of not less than 30 days' suspension without pay shall be imposed by direction of the Board.

(Added Pub. L. 103-94, § 2(a), Oct. 6, 1993, 107 Stat. 1004.)

PRIOR PROVISIONS

A prior section 7326, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 526, authorized nonpartisan political activities, prior to the general revision of this subchapter by Pub. L. 103-94.

A prior section 7327, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 526; Pub. L. 96-54, § 2(a)(14), (15), Aug. 14, 1979, 93 Stat. 382; Pub. L. 97-468, title VI, § 615(b)(1)(E), Jan. 14, 1983, 96 Stat. 2578, related to permitted political activity in certain municipalities where employees reside, prior to the general revision of this subchapter by Pub. L. 103-94.

A prior section 7328, added Pub. L. 96-191, § 8(e)(1), Feb. 15, 1980, 94 Stat. 33, exempted employees of the General Accounting Office from provisions of this subchapter, prior to the general revision of this subchapter by Pub. L. 103-94.

SUBCHAPTER IV—FOREIGN GIFTS AND DECORATIONS

AMENDMENTS

1967—Pub. L. 90-83, § 1(45)(A), Sept. 11, 1967, 81 Stat. 208, substituted "FOREIGN GIFTS AND DECORATIONS" for "FOREIGN DECORATIONS" in subchapter heading.

[§ 7341. Repealed. Pub. L. 90-83, § 1(45)(B), Sept. 11, 1967, 81 Stat. 208]

Section, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 526, related to receipt and display of foreign decorations. See section 7342 of this title.

§ 7342. Receipt and disposition of foreign gifts and decorations

(a) For the purpose of this section—

(1) "employee" means—

(A) an employee as defined by section 2105 of this title and an officer or employee of the United States Postal Service or of the Postal Rate Commission;

(B) an expert or consultant who is under contract under section 3109 of this title with the United States or any agency, department, or establishment thereof, including, in the case of an organization performing services under such section, any individual involved in the performance of such services;

(C) an individual employed by, or occupying an office or position in, the government of a territory or possession of the United States or the government of the District of Columbia;

(D) a member of a uniformed service;

(E) the President and the Vice President;

(F) a Member of Congress as defined by section 2106 of this title (except the Vice President) and any Delegate to the Congress; and

(G) the spouse of an individual described in subparagraphs (A) through (F) (unless such individual and his or her spouse are separated) or a dependent (within the meaning of section 152 of the Internal Revenue Code of 1986) of such an individual, other than a spouse or dependent who is an employee under subparagraphs (A) through (F);

(2) "foreign government" means—

(A) any unit of foreign governmental authority, including any foreign national, State, local, and municipal government;

(B) any international or multinational organization whose membership is composed of any unit of foreign government described in subparagraph (A); and

(C) any agent or representative of any such unit or such organization, while acting as such;

(3) "gift" means a tangible or intangible present (other than a decoration) tendered by, or received from, a foreign government;

(4) "decoration" means an order, device, medal, badge, insignia, emblem, or award ten-

STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

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September 14, 1990

ATTORNEY GENERAL OPINION NO. 90- 109

Mr. Ray D. Siehndel, Secretary
Kansas Department of Human Resources
401 S.W. Topeka Blvd.
Topeka, Kansas 66603-3182

Re: Labor and Industries--Employment Security Law--Administration of Act; Political Activities Prohibited, Penalties

State Departments; Public Officers and Employees --Civil Service--Unlawful Use of Authority or Influence to Cause Persons in Classified Service to Join Organization or Participate in Political Activity; Campaign Contributions by Classified State Employees

Synopsis: K.S.A. 1989 Supp. 44-714, as amended by L. 1990, ch. 122, § 17, prohibits designated employees of the Kansas department of human resources from participating in all forms of political activity except as a candidate for nonpartisan elective office. Because the state lacks a legitimate interest for such a prohibition, that provision of the statute continues to be unconstitutionally overbroad.

Employees of the department of human resources are permitted to: (1) post yard signs at their residences; (2) participate in fund-raisers; (3) make contributions; (4) attend party functions; and (5) work for a particular candidate or party on the employees' own time. However, those employees subject to state statute and those employees subject to the federal Hatch Act are restricted in

solicitation of contributions. Cited herein: K.S.A. 1989 Supp. 44-714, as amended by L. 1990, ch. 122, § 17; K.S.A. 75-2953; 75-2974; 5 U.S.C.A. § 1501; 5 U.S.C.A. § 1502.

* * *

Dear Secretary Siehndel:

As secretary of the Kansas department of human resources (department), you request our opinion regarding the political activities in which employees of the department may participate. Specifically you ask whether such employees may: (1) post yard signs; (2) solicit contributions for candidates; (3) participate in fund-raisers; (4) make unsolicited contributions; (5) attend party functions; or (6) work for a particular candidate or party.

The political activities of employees of the department are subject to K.S.A. 1989 Supp. 44-714 (as amended by L. 1990, ch. 122, § 17), K.S.A. 75-2953, 75-2974, and 5 U.S.C.A. § 1501 et seq. (the Hatch Act). Before it can be determined in which political activities employees of the department may engage, the affect of the amendment to K.S.A. 1989 Supp. 44-714 must be determined.

In State, ex rel. v. Wolgast, No. 86-CV-672 (Shawnee County District Court, December 29, 1986) it was determined that K.S.A. 44-714(c)(2), in prohibiting all forms of partisan and nonpartisan political activity, was unconstitutionally vague and overbroad. In L. 1990, ch. 122, § 17, K.S.A. 1989 Supp. 44-714(c)(2) was amended as follows:

> "(2) No employee engaged in the administration of the employment security law shall directly or indirectly solicit or receive or be in any manner concerned with soliciting or receiving any assistance, subscription or contribution for any political party or political purpose, other than soliciting and receiving contributions for such person's personal campaign as a candidate for a nonpartisan elective public office, nor shall any employee engaged in the administration of the employment security law participate in any form of political

> activity except as a candidate for a nonpartisan elective public office, nor shall any employee champion the cause of any political party or the candidacy of any person other than such person's own personal candidacy for a nonpartisan elective public office. Any employee engaged in the administration of the employment security law who violates these provisions shall be immediately discharged. No person shall solicit or receive any contribution for any political purpose from any employee engaged in the administration of the employment security law and any such action shall be a misdemeanor and shall be punishable by a fine of not less than $100 nor more than $1,000 or by imprisonment in the county jail for not less than 30 days nor more than six months, or both." (Emphasis denotes new language.)

The amendment permits political activity as a nonpartisan candidate by employees engaged in the administration of the employment security law. All other forms of political activity continue to be forbidden by K.S.A. 1989 Supp. 44-714, as amended by L. 1990, ch. 122, § 17.

> "We read [United States Civil Service Comm' v. National Association of Letter Carriers, 413 U.S. 548, 93 S.Ct. 2880, 37 L.Ed.2d 796 (1973)] as recognizing several important societal interests which would be sufficiently adversely affected by certain conditions potentially attendant on unrestrained political activity of government employees as to justify substantial restrictions on those activities. At least four such societal interests may be identified: the interest in an efficient government; that in a government which enjoys public confidence; that in the right of individual citizens to be free of governmental discrimination based on their political activities or connections; and that in the right of governmental employees to be free of employer pressure in their personal

> political activity. The potential conditions which would be harmful or injurious to these important societal interests include the following three. First, the condition could exist in which 'employment and advancement in Government service' is made to 'depend on political performance' rather than on 'official effort' or 'meritorious performance.' . . . A second harmful condition is that of governmental employees 'practicing political justice,' or exercising 'political influence . . . on others,' or channeling 'governmental favor' 'through political connections.' . . . Third, the condition may occur under which 'the political influence of federal employees' is brought to bear without restraint 'on the electoral process,' or the governmental work force is employed to build a powerful 'political machine.'" Wachsman v. City of Dallas, 704 F.2d 160, (C.A.5 Tex. 1983), reh. denied , 710 F.2d 837 (C.A.5 Tex. 1983), cert. denied 464 U.S. 1012, 104 S.Ct. 537, 78 L.Ed.2d 717 (1983).

A number of jurisdictions have held as unconstitutionally overbroad any provisions which restrict nonpartisan as well as partisan political activity. See 51 A.L.R. 4th 702, 741 (1987). However, the foregoing conditions are no less harmful merely because they may be brought about by political pressures generated in a nonpartisan, rather than a partisan, political context. Wachsman, supra, at 167. "In any given case, the relevant inquiry must be whether the threat to the state's interests in the impartiality of its public servants stems from party involvement or from political involvement." Morial v. Judiciary Comm'n of State of Louisiana, 565 F.2d 295, 303 n. 8 (C.A.5 La. 1977), cert. denied, 435 U.S. 1013, 98 S.Ct. 1887, 56 L.Ed.2d 395 (1978) (emphasis in original). Therefore, restrictions on nonpartisan political activity of designated public employees may be upheld, provided a significant governmental interest is served by the restrictions. See Magill v. Lynch, 560 F.2d 22 (C.A.1 RI. 1977), cert. denied, 434 U.S. 1063, 98 S.Ct. 1236, 55 L.Ed.2d 763 (1978) (fire fighters of city barred from nonpartisan candidacy for city office; "nonpartisan" elections still had strong partisan overtones;

prevents political oppression of public employees and situations in which subordinate city employee runs against employee's supervisor); Morial, supra, (judges required to resign before seeking nonpartisan political office; ensures independence of judiciary from political pressures); Wachsman, supra (nonpartisan political activity of fire and police officers restricted; prevents coercion in election of superiors).

While the state may have a legitimate interest in restricting the nonpartisan political activities of those employees engaged in the administration of the employment security law, it is difficult to envision how K.S.A. 1989 Supp. 44-714 in its entirety serves a valid interest of the state. The statute permits an employee of the department of human resources engaged in the administration of the employment security law to participate in political activity as a candidate for nonpartisan political office. As such, the employee would be permitted to solicit and receive contributions, participate in political activity, and champion the cause of his or her own candidacy. However, those employees of the department subject to K.S.A. 1989 Supp. 44-714, as amended, who support a nonpartisan candidate continue to be prohibited from engaging in such activity. The courts have recognized a legitimate state interest in prohibiting nonpartisan political activity when such prohibition prevents political coercion of the employees of the governmental entity, ensures the independence of the governmental entity, or contributes to the impartiality of the public servants. None of these interests are served by K.S.A. 1989 Supp. 44-714, as amended. Because the prohibition on nonpartisan political activity in K.S.A. 1989 Supp. 44-714, as amended by L. 1990, ch. 122, § 17, fails to serve a legitimate interest of the state, the statute continues to be unconstitutionally vague and overbroad.

The political activities of employees of the department of human resources continue to be subject to the provisions of K.S.A. 75-2953, 75-2974, and the Hatch Act, 5 U.S.C.A. § 1501, et seq.

POSTING YARD SIGNS

Posting yard signs at one's residence does not fall within those political activities that may be proscribed by statute or regulation. See Letter Carriers, supra, 413 U.S. at 556, Broadrick, supra, 413 U.S. at 600. Employees of the department may post yard signs at their residence.

SOLICITING CONTRIBUTIONS FOR CANDIDATES

Both K.S.A. 75-2953 and 75-2974 restrict the solicitation of donations by officers and employees of the state from persons holding positions in the classified service.

K.S.A. 75-2953 states in part:

> "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 classified service . . . to pay or promise to pay any assessment, subscription or contribution. . . ."

K.S.A. 75-2974(a) states:

> "No supervising official shall solicit any contribution to or on behalf of any state officer or candidate for state office from any state employee under the supervision of such supervising official."

A state employee under K.S.A. 75-2974 is an employee "holding a position in the classified service under the Kansas civil service act." K.S.A. 75-2974(e)(1).

Solicitation of contributions by certain state and local officers is also restricted by 5 U.S.C.A. § 1502(a) which states in part:

> "A State or local officer [as defined by 5 U.S.C.A. § 1501(4)] may not --
>
> . . . .
>
> "(2) directly or indirectly coerce, attempt to coerce, command, or advise a State or local officer or employee to pay, lend, or contribute anything of value to a party, committee, organization, agency, or person for political purposes."

Therefore, no employee may use their authority to compel contributions on behalf of a political candidate from employees within the classified service, no supervising official may solicit contributions from employees under his or

her supervision, and none of those individuals "whose principal employment is in connection with an activity which is financed in whole or in part by loans or grants made by the United States or a Federal agency," 5 U.S.C.A. § 1501, may participate in any manner in the solicitation of campaign contributions from a state or local officer or employee [as defined by 5 U.S.C.A. § 1501(4)] for partisan candidates, political parties, or other partisan political purposes.

PARTICIPATION IN FUND-RAISERS

There is no state statute which prohibits employees of the department of human resources from participating in political fund-raisers. The Hatch Act did prohibit the active participation in fund-raising activities for a partisan political candidate or political party by those individuals subject to 5 U.S.C.A. § 1502 until January 1, 1975. On that date, an amendment to 5 U.S.C.A. § 1502(3) became effective, and prohibited political activity was modified from participation in political management or campaigns to candidacies for elective office. See McKechnie v. McDermott, 595 F.Supp. 672, 675 (N.D. Ind. 1984). Employees of the department may therefore participate in political fund-rasiers.

MAKING CONTRIBUTIONS

K.S.A. 75-2974(c) states:

> "No state employee who lawfully, willingly and voluntarily makes a contribution to or on behalf of any state officer or candidate for state office shall be dismissed, demoted, suspended or subjected to any other disciplinary action because of the making of such contribution."

There are no prohibitions contained in state statute or the Hatch Act against employees of the department making contributions to political candidates.

ATTENDING PARTY FUNCTIONS

Neither state statute nor the Hatch Act prohibits employees of the department from attending party functions.

WORKING FOR A PARTICULAR CANDIDATE OR PARTY

As stated in the section regarding participation in fund-raisers, working for a political candidate or party would have been a violation of 5 U.S.C.A. § 1502 prior to its amendment in 1975. Because 5 U.S.C.A. § 1502 no longer prohibits a state or local officer or employee from taking an active part in political management or in political campaigns, the Hatch Act does not prohibit state or local officers or employees from working for a particular candidate or party. State statute likewise does not prohibit such activity.

While employees of the department are not prohibited by the Hatch Act or state statute from posting yard signs, participating in fund-raisers, attending party functions, and working for political candidates or parties, it must be remembered that K.S.A. 75-2953 forbids any officer, agent, clerk or employee of the state from directly or indirectly compelling any employee in the classified service to take part in such activities. Also, because 5 U.S.C.A. § 1502 prohibits a state or local officer or employee from "us[ing] his official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for office," those individuals subject to the Hatch Act should not permit their names to the used in connection with any of the activities herein considered.

Very truly yours,

Robert T. Stephan

ROBERT T. STEPHAN
Attorney General of Kansas

Richard D. Smith

Richard D. Smith
Assistant Attorney General

RTS:JLM:RDS:jm

2-18

STATE OF KANSAS

WARD LOYD
REPRESENTATIVE, 123RD DISTRICT
FINNEY COUNTY
1304 CLOUD CIRCLE, P.O. BOX 834
GARDEN CITY, KS 67846

ROOM 174-W, STATEHOUSE
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TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER: JUDICIARY
RULES AND JOURNALS
TRANSPORTATION
UTILITIES
JOINT COMMITTEE ON
SPECIAL CLAIMS AGAINST
THE STATE

TESTIMONY IN SUPPORT OF HB 2246
SUBMITTED BY WARD LOYD
ON BEHALF OF COUNTY AND DISTRICT OFFICIALS AND PROPERTY OWNERS OF AND IN DRAINAGE DISTRICT NO. 1, FINNEY COUNTY, KANSAS
MARCH 7, 2001

Senator Allen and Committee Members:

Last year at this time I was contacted by a group of constituents concerning a problem experienced by a local drainage district, Drainage District No. 1 in Finney County, which encompasses an area lying immediately adjacent to and west of Garden City. Specifically, DD#1 does not have the financial means to clean up the area it was originally designed to drain. The problem is exacerbated by continual urban development (residential, commercial and industrial) in the area over the 50 years since DD#1 was first organized.

Submitted herewith is a copy of February 15, 2001, testimony before the House Local Government Committee from County Commissioner Jerry Davis, who also is a property owner in DD#1, and from Cecil O'Brate, who owns both property as well as a business in the district, intended to assist with understanding the history of the district and the basis for the requests embodied in HB 2246.

Those interested in this issue desire that the governing body of the drainage district has the authority to order into the district property outside the district that in fact drains into and benefits from DD#1's drainage facility, and they want to be able to levy taxes on property in the district based upon the value of the property, rather than the currently authorized set amount per acre.

Senate Elec + Loc Gov
03-07-01
Attachment 3

This request found its genesis in a study sponsored by the County Commission of Finney County, completed February 8, 2000.

The legislative issues presented as a result of the study were identified in a communication received from a representative of the Finney County Commissions, indicating

- The Board of County Commissioners has been approached by property owners having real estate included in the boundaries of DD#1. The concern rests with the statutory limitations placed upon drainage districts formed under 24-601, *et seq*.

- DD#2 (another drainage district in the area) is formed under 24-501 *et seq*. The method of funding is by an annual mill levy not to exceed five (5) mills which allows a reserve to be maintained for unanticipated expenses. Further, the ability to expand the district is less cumbersome.

- The question posed is this – can 24–601 *et seq*., be amended to permit funding by annual mill levy and can this act be amended to accommodate expansion as is allowed in 24-501?

- Finally, would it be possible and/or feasible to grant those districts formed under 24-601 all powers as those formed under 24-501?

Because of the point in time during last year's session when this issue was brought to our attention, we had no ability to prepare a bill for legislative consideration, or even an amendment that could ride through on the coat tails of some other vehicle; nothing similar was on the agenda. We appreciate the opportunity to present the issue to the Kansas Legislature.

You will also find submitted with this testimony a letter of support for the proposed legislation (forwarded prior to the drafting and filing of HB 2246). We also provide photographs of the area representative of problems experienced, and graphic of the need for a change in the statutory authorization. A representative for DD#1, Jerry Davis, who is also serves as a member of the Board of County Commissioners for Finney County, is present and available to answer committee questions.

We respectfully encourage the favorable consideration of HB 2246 by this committee.

TAYLOR & ASSOCIATES, INC.
CONSULTING ENGINEERS
PHONE (316) 276-2356
FAX (316) 276-2037
509 NORTH 6TH
GARDEN CITY, KANSAS 67846

February 21, 2000

Representative Ward Loyd
District 123
Room 174 - West
Topeka, KS 66612
Fax# 316-275-0788

RE: Drainage District No.1 & Drainage District No.2

Dear Mr. Loyd,

Along with this letter we have enclosed pictures of a rain storm taken last July that in fact flooded parts of the Drainage District No.1 area that are in question. As you recall the two items that seem to be a paramount importance to us, both of these are important to Drainage District No.1 and Drainage District No. 2 would allow the Board of Supervisors to order property into the district that in fact drains into the district and benefited from the drainage improvements of the district. The Board of Supervisors should be allowed to change the type of taxation from taxing on a per acre basis to a mill levy charge those two items would be of tremendous help for Drainage District No.1 and Drainage District No.2. Of course the third item which we have some different interpretation of the laws were formed under but we need it to be able to establish what our current right-of-ways are for the Drainage Districts themselves.

I have taken the liberty to send pictures also to Stephen Morris. I hope these pictures help you to understand more of our problems. Thank you for your attention to this matter.

Yours truly,

Lot F. Taylor, PE & RLS
Taylor & Associates, Inc.

LFT:drm
cc: Senator Stephan Morris

Enc.

Rep. Ward Loyd
State Capitol, Room174-W
Topeka, Kansas 66612

February 14, 2001

RE: House Bill No. 2246 and Finney County
Drainage District #1

History: DD #1 was formed by two actions. The first was by District Court Action March 22, 1950 and the second by an agreement dated November 28, 1951 with the City of Garden City. The first action included approximately thirteen sections outside the city limits, which is DD #1proper. The second action provided the means by which the water draining from DD #1 could pass through the City utilizing a ditch constructed by the City for surface and storm drainage. The DD #1 Ditch from near Holcomb east to the west edge of the City was for the drainage of agricultural subsurface alkaline water, today it is surface and storm drainage. The taxing structure was not formulated on a uniform mill levy basis, but on one that levied a greater tax on individuals closer to the ditch receiving a greater benefit. At the time of formation this area was almost all agricultural in nature. The Finney County Commission in an effort to assist the district in addressing drainage problems, created by urban growth over the last 50 years, sponsored a study ~~of the~~ district and adjoining areas. This report was received February 8, 2000. Among the recommendations of this report was that the County Commission aid in the changing of the statutes governing the taxing formula and annexation of properties affecting drainage in the district and related areas.

Today this area includes industrial manufacturing, mobile home parks, many rural homes, and numerous commercial businesses. Rural Water District #1 now serves most of this area and discussions of a sewer district are heard. Currently there is a liquid feed manufacturing business under construction that will occupy 12 acres. The district and adjacent areas are of mixed zoning and have drawn interest from all sectors. At least one parcel outside the district (130 acres of I-3 zone) has drawn interest. Should those interested in this parcel develop it the result would be 75 acres of buildings and parking lot. It is this type of growth potential combined with the past and potential growth of Garden City that will result in conflict between the two entities. At this time there are several drainage structures within Garden City that are near capacity. It should also be noted that the grade from the beginning of the ditch to the city limit is barley 40 feet in 7 miles or 1-1/4 inches per 100 feet. It is therefore proper to seek resolution of current and future drainage concerns now, while right-of-ways are relative free of developments and issues resulting from community growth can be addressed by planning and not crisis management!

House Bill No. 2246 is the type of legislative assistance critical to support community development. This type of consideration is greatly appreciated!

Sincerely,

Jerry M. Davis
BOCC District #2, Finney County
Property Owner DD #1

February 14, 2001

Re: Finney County Drainage District #1

Dear Committee Members,

This old drainage district was formed many years ago in order to drain a low area of farm ground. The district was set up for the farmers in the area to be taxed on the basis of the number of drainage acres they had within the district area, therefore apportioning the cost based on the amount each person would benefit. The drainage ditch and the taxing arrangement has served its purpose well for many years.

However, over the last few decades, considerable commercial, industrial and residential development has located in the drainage district and its surrounding area. This development has not only had a significant impact in new drainage problems in the area, but it has resulted in the remaining farmers bearing the full cost of drainage maintenance and improvements necessary for the entire area. This is no longer fair and equitable.

I own and operate a manufacturing facility in this area. Over the last 30 years, about once every three years, we receive a rain of two inches or more. Every time, my plant is flooded with rain water reaching inside the plant and offices. This flooding is the result of the changed drainage patterns from the additional development. It is time to correct these problems.

These new drainage problems could be resolved with a new drainage ditch to the river. However, the drainage district needs to be expanded to include the additional commercial, industrial and residential development. In order for them to bear their fair share and not to over-burden the remaining farmers, the basis of taxation also needs to be changed from acreage participation to actual valuation.

Our request is simply and only to be allowed to form a new drainage district, under which these additional drainage problems can be alleviated and resolved, through a method of taxation that is fair and equitable to all involved.

Sincerely,

Cecil O'Brate

Some Questions You Might Want To Ask

1. Why has this flooding problem increased and why are you experiencing more problems than you did 30 years ago? - Highway 50 was re-routed through the newer industrial area, causing drainage patterns to change.

2. Does the majority of the people in the drainage district and the newer area proposed to be included agree and support this project? - Yes, there is strong support.

3. Why do you want to change the basis under which the district is taxed? - The mix of farming, commercial, industrial and residential users would result in an inequitable allocation based on acreage. My manufacturing plant with 80-90 employees on a few acres will not have the same impact as an equivalent number of acres of farm ground.

4. How big an area will this effect and will the resolution be a permanent solution or only a temporary correction? - The intent is to include the entire area involved so that the drainage improvements made will not only resolve all the problems being experienced currently, but also any growth over the foreseeable future.

December 21, 2000

Board of Directors of the
Finney County Drainage District No. 1

RE: Letter of Support

Dear Legislators,

Finney County Drainage District No. 1 fully endorses the efforts of the Finney County Commissioners in helping us change the legislation to allow Drainage District No. 1 to change its method of taxation and further to help both the Drainage District No. 1 and Drainage District No. 2 in allowing us an easier way of annexation of the property that benefits from the Drainage Districts efforts.

We the undersigned Board of Directors of Drainage District No. 1 fully agree with these efforts:

Cecil O'Brate

Tim Miller

Jerry Chandler

John Metheney

Raylene Dick

Larry Jones

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Senate Elec & Loc Gov
03-07-01
Attachment 4

STATE OF KANSAS

WARD LOYD
REPRESENTATIVE, 123RD DISTRICT
FINNEY COUNTY
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ROOM 174-W STATEHOUSE
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TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEES
CHAIR: RULES & JOURNAL
VICE-CHAIR: JUDICIARY
MEMBER: UTILITIES
TAX, JUDICIAL & TRANSPORATION BUDGET
CORRECTION & JUVENILE JUSTICE OVERSIGHT

TESTIMONY IN SUPPORT OF HB 2246
SUBMITTED BY WARD LOYD
ON BEHALF OF COUNTY AND DISTRICT OFFICIALS AND PROPERTY OWNERS OF AND IN DRAINAGE DISTRICT NO. 1, FINNEY COUNTY, KANSAS
FEBRUARY 15, 2001

Last year at this time I was contacted by a group of constituents concerning a problem experienced by a local drainage district, Drainage District No. 1 in Finney County, which encompasses an area lying immediately adjacent to and west of Garden City. Specifically, DD#1 does not have the financial means to clean up the area it was originally designed to drain. The problem is exacerbated by continual urban development (residential, commercial and industrial) in the area over the 50 years since DD#1 was first organized.

Submitted herewith is a copy of testimony from County Commissioner Jerry Davis, who also is a property owner in DD#1, and from Cecil O'Brate, who owns both property as well as a business in the district, intended to assist with understanding the history of the district and the basis for the requests embodied in HB 2246.

Those interested in this issue desire that the governing body of the drainage district has the authority to order into the district property outside the district that in fact drains into and benefits from DD#1's drainage facility, and they want to be able to levy taxes on property in the district based upon the value of the property, rather than the currently authorized set amount per acre. This request is spurred by a study sponsored by the County Commission of Finney County, completed February 8, 2000.

The legislative issues presented as a result of the study were identified in a communication received from a representative of the Finney County Commissions, indicating

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You will also find submitted with this testimony a letter of support for the proposed legislation (forwarded prior to the drafting and filing of HB 2246). We also provide photographs of the area representative of problems experienced, and graphic of the need for a change in the statutory authorization. Representatives for DD#1, Jerry Davis, Cecil O'Brate, and Lot Taylor, are present in person (notwithstanding the weather) and available to answer committee questions.

We respectfully encourage the favorable consideration of HB 2246 by this committee.

Sen. Steve Morris
State Capitol, Room143-N
Topeka, Kansas 66612

March 06, 2001

RE: House Bill No. 2246 and Finney County
Drainage District #1

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Today this area includes industrial manufacturing, mobile home parks, many rural homes, and numerous commercial businesses. Rural Water District #1 now serves most of this area and discussions of a sewer district are heard. Currently there is a liquid feed manufacturing business under construction that will occupy 12 acres. The district and adjacent areas are of mixed zoning and have drawn interest from all sectors. At least one parcel outside the district (130 acres of I-3 zone) has drawn interest. Should those interested in this parcel develop it the result would be 75 acres of buildings and parking lot. It is this type of growth potential combined with the past and potential growth of Garden City that will result in conflict between the two entities. At this time there are several drainage structures within Garden City that are near capacity. It should also be noted that the grade from the beginning of the ditch to the city limit is barley 40 feet in 7 miles or 1-1/4 inches per 100 feet. It is therefore proper to seek resolution of current and future drainage concerns now, while right-of-ways are relative free of developments and issues resulting from community growth can be addressed by planning and not crisis management!

House Bill No. 2246 is the type of legislative assistance critical to support community development. This type of consideration is greatly appreciated!

Sincerely,

Jerry M. Davis
BOCC District #2, Finney County
Property Owner DD #1

December 21, 2000

Board of Directors of the
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Tim Miller

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February 14, 2001

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However, over the last few decades, considerable commercial, industrial and residential development has located in the drainage district and its surrounding area. This development has not only had a significant impact in new drainage problems in the area, but it has resulted in the remaining farmers bearing the full cost of drainage maintenance and improvements necessary for the entire area. This is no longer fair and equitable.

I own and operate a manufacturing facility in this area. Over the last 30 years, about once every three years, we receive a rain of two inches or more. Every time, my plant is flooded with rain water reaching inside the plant and offices. This flooding is the result of the changed drainage patterns from the additional development. It is time to correct these problems.

These new drainage problems could be resolved with a new drainage ditch to the river. However, the drainage district needs to be expanded to include the additional commercial, industrial and residential development. In order for them to bear their fair share and not to over-burden the remaining farmers, the basis of taxation also needs to be changed from acreage participation to actual valuation.

Our request is simply and only to be allowed to form a new drainage district, under which these additional drainage problems can be alleviated and resolved, through a method of taxation that is fair and equitable to all involved.

Sincerely,

Cecil O'Brate

Cecil O'Brate

TAYLOR & ASSOCIATES, INC.
CONSULTING ENGINEERS
PHONE (316) 276-2356
FAX (316) 276-2037
509 NORTH 6TH
GARDEN CITY, KANSAS 67846

February 21, 2000

Representative Ward Loyd
District 123
Room 174 - West
Topeka, KS 66612
Fax# 316-275-0788

RE: Drainage District No.1 & Drainage District No.2

Dear Mr. Loyd,

Along with this letter we have enclosed pictures of a rain storm taken last July that in fact flooded parts of the Drainage District No.1 area that are in question. As you recall the two items that seem to be a paramount importance to us, both of these are important to Drainage District No.1 and Drainage District No. 2 would allow the Board of Supervisors to order property into the district that in fact drains into the district and benefited from the drainage improvements of the district. The Board of Supervisors should be allowed to change the type of taxation from taxing on a per acre basis to a mill levy charge those two items would be of tremendous help for Drainage District No.1 and Drainage District No.2. Of course the third item which we have some different interpretation of the laws were formed under but we need it to be able to establish what our current right-of-ways are for the Drainage Districts themselves.

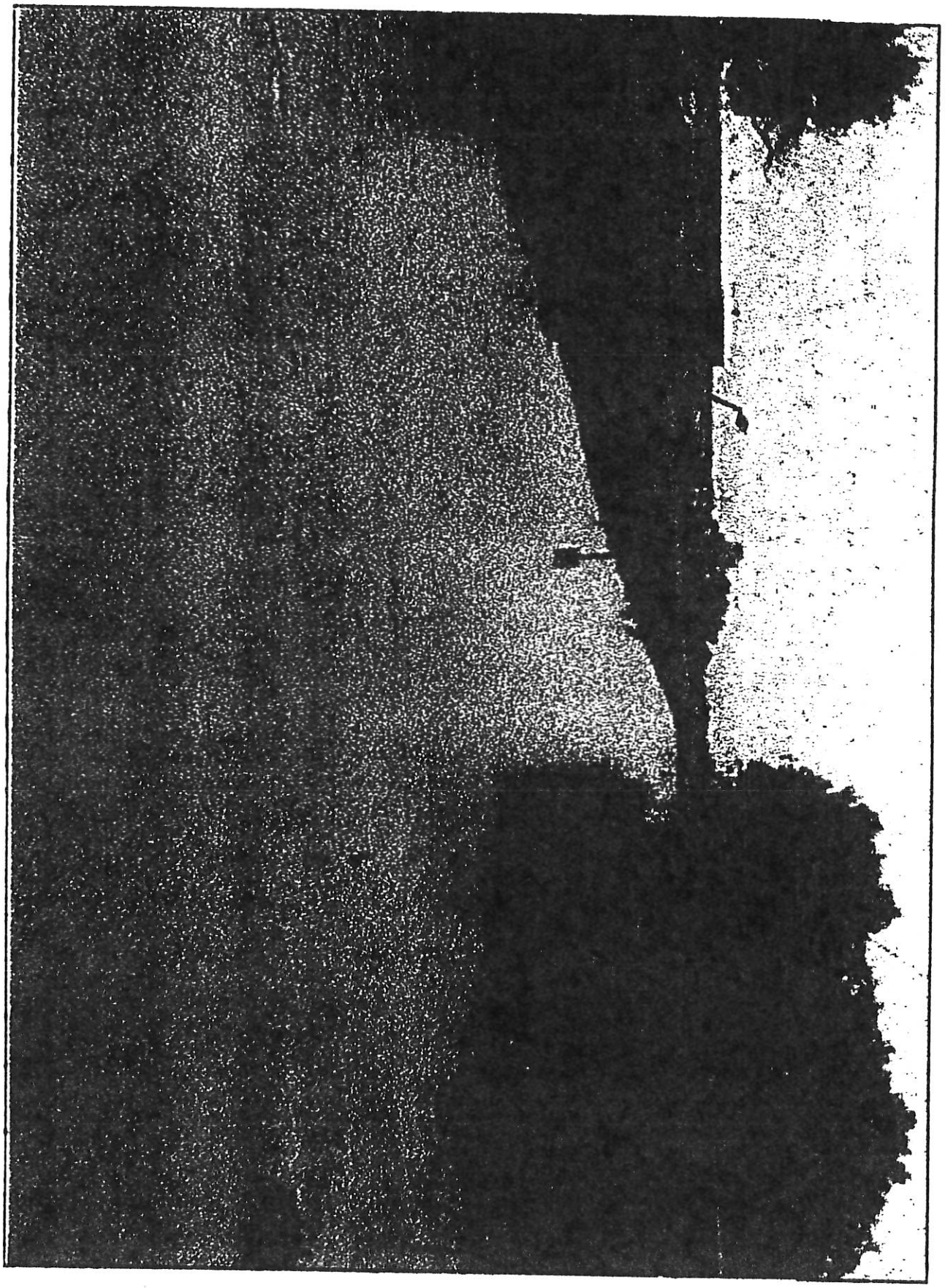
I have taken the liberty to send pictures also to Stephen Morris. I hope these pictures help you to understand more of our problems. Thank you for your attention to this matter.

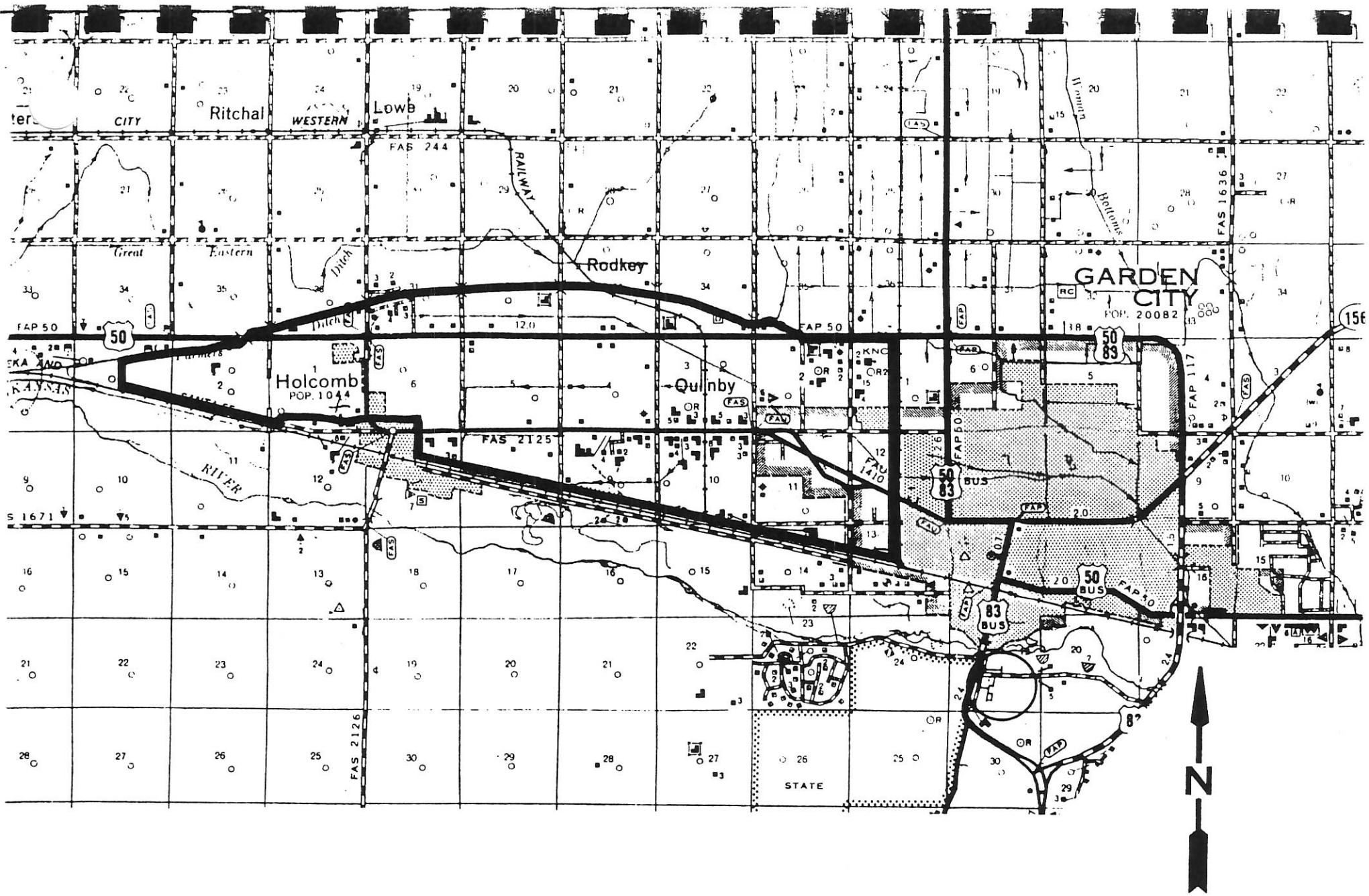
Yours truly,

Lot F. Taylor, PE & RLS
Taylor & Associates, Inc.

LFT:drm
cc: Senator Stephan Morris

Enc.





DRAINAGE DISTRICT NO. 1
PROPOSED BOUNDARY AREA

N.T.S.

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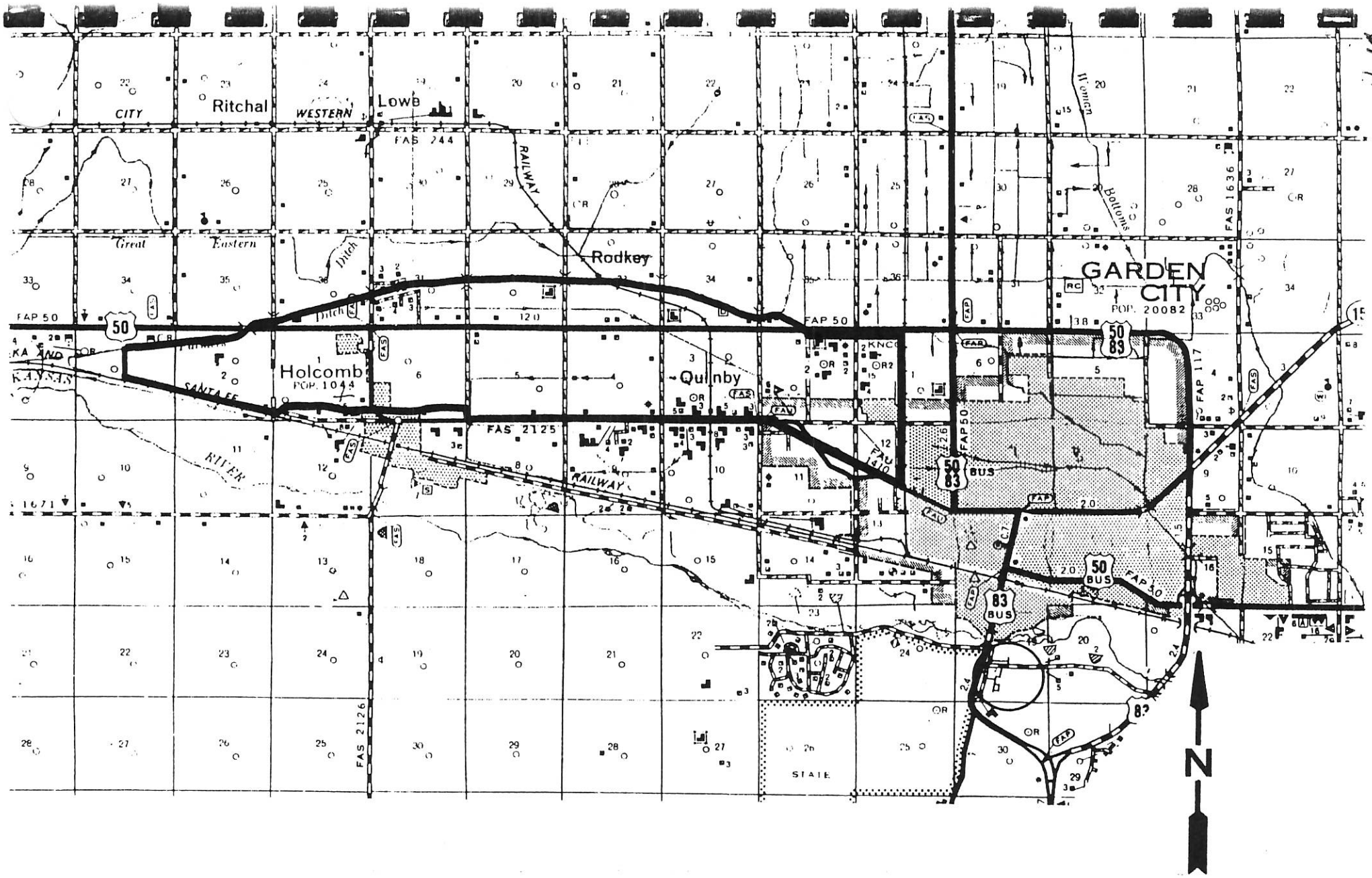
509 NORTH SIXTH ST.
GARDEN CITY, KS.
(316) 276-2354



DRAINAGE DISTRICT NO. 1
EXISTING BOUNDARY AREA

N.T.S.

TAYLOR & ASSOCIATES
CONSULTING ENGINEERS
509 NORTH SIXTH ST.
GARDEN CITY, KS.
(316) 276-2356

STATE OF KANSAS

KANSAS DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY OF TRANSPORTATION
Docking State Office Building
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E. Dean Carlson
Secretary of Transportation

Bill Graves
Governor

TESTIMONY BEFORE SENATE ELECTIONS AND LOCAL GOVERNMENT COMMITTEE

REGARDING HOUSE BILL 2246 DRAINAGE DISTRICTS

March 7, 2001

Madam Chairperson and Committee Members:

I am David Comstock, Director of the Division of Engineering and Design. On behalf of the Kansas Department of Transportation (KDOT), I appreciate the opportunity to testify on House Bill 2246 relating to the powers and duties of the governing bodies of certain drainage districts.

The Kansas Department of Transportation has a number of concerns relating to proposed changes in the bill which appear to impact our responsibility to design, construct, and maintain a safe and efficient transportation system.

I will address our specific concerns in the order in which they appear in the bill:

- Section 2. (b) (6) (Page 3, Line 24) gives the board of supervisors of the drainage district the power to "remove all obstructions from a channel of the watercourse." This leads to the question of whether there may be situations in which a highway drainage culvert or other transportation-related items within the highway right-of-way might be perceived as an obstruction. The bill appears to allow the board of supervisors to remove these "obstructions."

- Section 2. (b) (9) (beginning on Page 3, Line 31) gives the board of supervisors of the drainage district the power to "require that all bridges across the watercourses shall be of sufficient length or that they shall be provided with sufficient trestle work to permit the unobstructed flow of the waters at flood time." We have serious concerns with the definition of the terms "sufficient length," "sufficient trestle work," "unobstructed flow," and "waters at flood time." These are subjective terms and are subject to a number of interpretations. Under this provision, the board of supervisors appears to have the authority to dictate desired bridge lengths to state and local highway agencies without regard to the consequences.

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- Section 2. (b) (10) (beginning on Page 3, Line 34) gives authority to the board of supervisors to "construct cutoffs, spillways and auxiliary channels across railroads and highways, to compel the adequate bridging of the same and to **compel the raising of the grades of the railroads and highways"** (emphasis added). This seems to give power to the board of supervisors to mandate the construction of bridges and other drainage structures on new or existing highways and roads without regard to impacts or costs. It also gives authority to dictate roadway elevations and grades in conflict with our responsibility to design and construct safe and efficient highways.

Sufficient regulatory authority is already vested in the regulations of the Division of Water Resources of the Kansas Department of Agriculture to address the issues we have raised regarding this bill. KDOT is accountable to the Division of Water Resources and to the people of Kansas to assure that structures are properly designed to accommodate the expected drainage.

These comments are based on our understanding of the bill. If our understanding is correct, we strongly oppose this bill, because the board of supervisors of drainage districts are given broad powers to dictate design and maintenance issues to local and state highway agencies. The bill is vague and ambiguous in its definition of terms and would have very detrimental effects on our ability to fulfill our responsibilities to provide a safe and efficient transportation system.

In summary, KDOT is opposed to House Bill 2246.

STATE OF KANSAS

JO ANN POTTORFF
REPRESENTATIVE, EIGHTY-THIRD DISTRICT
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TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER: APPROPRIATIONS
TOURISM
CHAIRMAN: BUDGET COMMITTEE ON GENERAL GOVERNMENT AND HUMAN RESOURCES
CHAIRMAN: ARTS & CULTURAL RESOURCES
CHAIRMAN: EDUCATION COMMITTEE
NCSL ASSEMBLY ON STATE ISSUES

Thank you Madam Chair and members of the committee for the opportunity to testify on HB 2299.

The reason for the introduction of HB 2299 is because I heard the K-12 Education Financing for Results Task Force appointed by Governor Graves had a meeting behind closed doors. Across our nation Kansas has a reputation for good government and it is due in part to the belief that Kansas has an open, accessible government. Having discussions in public is not always easy but most Kansans would not have it any other way. The Kansas Open Meetings Act has contained a body of minimum standards for conducting open government meetings. I feel closed meetings should be held in very limited circumstances. This is probably due to my days on the Wichita School Board when closed meetings (executive sessions) could be held for a limited number of reasons. In fact, one time I did not attend an executive session of the Wichita School Board because I did not feel it was a justified reason to have the meeting.

I have included a letter to the editor of the Wichita Eagle that I wrote sharing my opposition of the closed meeting.

I appreciate the opportunity to bring this issue to you.

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This is what I found in The Eagle's archive:

I was disappointed to learn that a task force, appointed by Gov. Bill Graves to recommend changes to the school-finance formula, met behind closed doors ("School-finance team meets in private," Sept. 23 Eagle). Its rationale was that allowing public access to the deliberations would inhibit frank discussion among task-force members. Apparently, the attorney general's office said the task force could legally deliberate in private. Congratulations to task-force member Lew Ferguson, a retired journalist, who felt the public's business deserves to be heard by the public.

It appears the state law requiring open meetings of governmental bodies does not apply to task forces that are advisory boards with unpaid volunteers. There will be two more meetings of the task force: one in Emporia and the other in Topeka, according to David Brant, chairman of the task force. I hope the task force reconsiders and holds its meetings in public. The school-f inance formula is too important to be discussed behind closed doors. All citizens have a right to hear the deliberations of the school-finance formula task force.

Rep. JO ANN POTTORFF
Wichita

KAB
KANSAS ASSOCIATION OF BROADCASTERS

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(785) 235-1307 * FAX (785) 233-3052
Web site: *www.kab.net* * E-mail: *harriet@kab.net*

Testimony
RE: HB 2299
Before Senate Committee on Elections and Local Government
March 7, 2001

Madam Chair and Members of the Committee, I am Harriet Lange representing the Kansas Association of Broadcasters. KAB serves a membership of radio and television stations in Kansas. We appreciate the opportunity to appear before you today in support of HB 2299.

HB 2299 would strengthen Kansas Open Meetings Act by clarifying that meetings of state agency advisory committees and subcommittees be subject to the Act. We support that clarification and we support the amendment taking it a step further - by defining the term "subordinate group", a term used in the current law but not defined, to mean *any* entity which is created by any public body subject to the act. This broadens the act to clarify that not only advisory committees of state agencies, but all such sub-groups of all political and taxing subdivisions would be subject to the act.

The purpose of Kansas Open Meetings Act is to ensure that public bodies do the public's business in public view. A truly informed electorate must have access to not only the actions taken by public bodies, but also to the decision-making process and the rationale that enters into a particular action. That rationale many times is determined by advisory or subordinate groups.

We urge your support of HB 2299 as amended.

Thank you for your consideration.

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House Bill 2299

Testimony of John Lewis, President
Kansas Sunshine Coalition for Open Government

I am John Lewis, president of the Kansas Sunshine Coalition for Open Government, and I speak today in favor of House Bill 2299.

The Sunshine Coalition was formed two years ago by a group of citizens, the news media and other parties who together determined that the natural tendency of government to distance itself from the citizenry had reached unacceptable proportions. The Coalition was instrumental, with several other organizations, in last year's passage of landmark open records legislation, and our organization has now received funding from the National Freedom of Information Coalition to continue to promote openness in Kansas government--at both the state and local levels--and to educate citizens about its importance.

Quite obviously, the Sunshine Coalition supports this bill to truly allow more sun to shine on the public's business. We especially appaud those legislators who have initiated and ushered it through the legislative process. On behalf of the citizens of Kansas, we thank you.

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Kansas Press Association, Inc.
5423 SW Seventh Street • Topeka, Kansas 66606 • Phone (785) 271-5304 • Fax (785) 271-7341 • www.kspress.com

March 7, 2001

Members of the Senate Elections Committee, my name is Jeff Burkhead and I am executive director of the Kansas Press Association, which represents nearly 250 Kansas newspapers. I am writing in support of HB 2299.

The tax-paying public has the right to know what goes on behind the doors of state task force committee and advisory board meetings. After all, it's the public's business that is being discussed behind those doors.

The Kansas Open Meetings Act should be broadened to include any state agency advisory committee or task force, so that groups such as the Governor's Task Force on School Finance would be required to conduct their business in full public view. Open government translates into good government, and Kansans expect and deserve nothing less.

I've served on two state task force advisory committees, and I'd like to think that, in both cases, we played an important part in the public policy process. State task force committees and advisory boards, such as the one on school finance, are an important step in the process of developing recommendations that could well form the basis for public policy. The public has a right to be involved in that decision-making process.

I urge you to support broadening the Kansas Open Meetings Act to include all state agency task force committees and advisory boards.

Thank you.

Jeff Burkhead
Executive Director
jburkhead@ksnews.com

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03-07-01
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S. .E OF KANSAS
Bill Graves, Governor

DEPARTMENT OF REV. .UE
Stephen S. Richards, Secretary

Office of Policy & Research
Richard L. Cram, Director
915 SW Harrison St.
Topeka, KS 66625

(785) 296-3081
FAX (785) 296-7928
Hearing Impaired TTY (785) 296-6461
Internet Address: www.ink.org/public/kdor

Office of Policy & Research

To: Senator Barbara Allen, Chair
Senate Elections and Local Government Committee

From: Richard L. Cram

Re: Testimony in Opposition to House Bill 2299

Date: March 7, 2001

House Bill 2299, as amended by House Committee, in Section 1, provides that meetings of advisory committees or subcommittee meetings of advisory committees shall be open to the public, and notice of such meetings shall be given in accordance with the open meetings law. "Advisory committee" is defined as any advisory committee, council, task force or other advisory body, of three or more members, created by a state agency head. Section 2 defines "subordinate group" not to include a "staff meeting."

The Secretary of Revenue opposes this bill. It will greatly hamper, if not cause elimination of, the Department's advisory groups. Several advisory groups at the Department of Revenue appear to fit within the definition of "advisory committee" contained in House Bill 2299. These would include groups consisting solely of Department personnel, as well as other groups including Department personnel and persons outside the agency.

Advisory Groups Consisting of Department Personnel

Advisory groups including only Department personnel are the Policy Council (Secretary, General Counsel, Director of Policy & Research, Secretary's Designee, and other Department tax policy officials), and Management Council (Secretary and the various division directors/chiefs within the Department).

The Policy Council advises the Secretary on tax policy matters and meets weekly to consider specific questions raised by taxpayer situations. The issues the Policy Council addresses inevitably involve how the Department should interpret and apply certain tax statutes or regulations to a particular taxpayer situation. The discussion may involve confidential taxpayer information, legally protected from disclosure. Advisory and pre-decisional discussions among Department officials regarding conflicting interpretations of tax laws fall within the executive privilege and are protected from disclosure. Executive privilege has been defined as follows:

> The deliberative process or "executive" privilege is one of the traditional mechanisms that provide protection to the deliberative and decision-making processes of the executive branch of government . . . . This privilege "shields

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> from mandatory disclosure 'inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency[.]' " *Paisley v. C.I.A.*, 712 F.2d 686, 697 (D.C.Cir.1983) (quoting 5 U.S.C. § 552(b)(5)). It also permits "agency decision-makers to engage in that frank exchange of opinions and recommendations necessary to the formulation of policy without being inhibited by fear of later public disclosure," *id.* at 698, and, thus, protects materials or records that reflect a government official's deliberative or decision-making process. *See EPA v. Mink*, 410 U.S. 73, 89, 93 S.Ct. 827, 35 L.Ed.2d 119 (1973).

DR Partners v. Board of County Commissioners of Clark County, 6 P.3d 465, __ (Nev. 2000).

The executive privilege is codified in Kansas law at K.S.A. 45-221(a)(20), which protects from disclosure under the Open Records Act the following documents:

> Notes, preliminary drafts, research data in the process of analysis, unfunded grant proposals, memoranda, recommendations or other records in which opinions are expressed or policies or actions are proposed, except that this exemption shall not apply when such records are publicly cited or identified in an open meeting or in an agenda of an open meeting.

If Policy Council meetings are to be considered public meetings under House Bill 2299, then documents generated for or from those meetings may not be protected from disclosure under K.S.A. 45-221(a)(20). Executive privilege would be eliminated. By necessity, the Policy Council would have to disband. The Secretary would be restricted to discussing tax policy issues only in 1 to 1 meetings.

The Management Council meets weekly, providing a forum for the Secretary to communicate with the division directors as a group and discuss confidential internal management and personnel issues. It is a vital management tool. The subject matter of Management Council discussions should also fall within the executive privilege. Because of the confidential nature of the matters discussed, were Management Council meetings to be made open to the public, they simply could not take place.

Advisory Groups Consisting of Persons Outside the Department

The Secretary appoints the members of the Medical Advisory Board, pursuant to K.S.A. 8-255b. This statutory Board (consisting of outside medical experts) reviews medical records in driver's license suspensions or revocations for public safety reasons due to physical or mental disabilities. Those medical records are confidential. Were House Bill 2299 enacted, this board might fit within the "quasi-judicial function" exception to the open meetings law, K.S.A. 75-4318(a). However, House Bill 2299 will likely be used to attempt to gain access to the records or meetings of this board. The Medical Advisory Board would cease to function, were its records or meetings open to the public.

The Director of Motor Vehicles has appointed the Treasurers' Advisory Council, which is made up of a treasurer from each of the six districts, plus the President of the Kansas County Treasurers Association. This council provides a discussion forum between county treasurers and the Department on motor vehicle issues.

The Governor appoints the Dealer Review Board, pursuant to K.S.A. 8-2412. The Dealer Review Board also provides a discussion forum between the Director of Motor Vehicles and board members concerning legislative proposals and issues pertaining to motor vehicle dealers.

The Secretary works with the following advisory councils consisting of Department personnel and persons from outside the agency: Revenue Advisory Council (Secretary, General Counsel, Director of Policy & Research, certain prominent tax attorneys, CPA's, and business community representatives); Tax Operations Advisory Council (Secretary, Department tax operations officials, CPA's, and business community representatives); and the Local Sales Tax Advisory Group (Secretary, other Department officials, and various local government tax officials). These advisory councils give the Department the opportunity to receive frank, honest feedback from persons outside the agency who, on behalf of others, deal frequently and closely with the Department.

The Revenue Advisory Council provides a sounding board for tax policy matters, giving the tax community an opportunity to suggest to the Department possible legislative initiatives, or to bring up for discussion issues concerning the Department's tax law interpretations. The Tax Operations Advisory Council provides the tax community with an opportunity to bring to the Department's attention tax processing and administrative issues. The Local Sales Tax Advisory Council provides a forum for local governments to discuss with the Department issues or problems surrounding the Department's distribution of local sales taxes to the various local taxing jurisdictions.

Were these advisory council meetings to become open to the public, this would likely have a chilling effect on participants' willingness to provide frank feedback to the Department, which would greatly diminish the effectiveness of these groups.

In addition to the difficulties discussed above, the notice requirements under the open meetings law, K.S.A. 75-4318(b), will make the scheduling of meetings of any of the above advisory councils extremely cumbersome. Advance notice of all meetings must be provided to any person requesting it.

Conclusion

For the reasons discussed above, the Secretary of Revenue opposes House Bill 2299. It essentially eliminates the protections of the executive privilege, as applied to advisory and decisional meetings of Department personnel. It will likely greatly diminish the effectiveness of various advisory groups that the Department depends on for frank feedback from outside the agency. It is a step backwards, in terms of efficiency in government.

KANSAS DEPARTMENT OF CORRECTION

A Safer Kansas Through Effective Correctional Services

BILL GRAVES, GOVERNOR — CHARLES E. SIMMONS, SECRETARY

LANDON STATE OFFICE BUILDING — 900 SW JACKSON
TOPEKA, KANSAS — 66612-1284
785-296-3317

Memorandum

Date: March 7, 2001

To: Senate Elections and Local Government Committee

From: Timothy G. Madden
Chief Legal Counsel

Re: HB 2299

As the chief counsel for the Department of Corrections, I have reviewed the provisions of HB 2299. I have also had the opportunity to discuss this bill with general counsel for other state agencies. Agency counsels believe that HB 2299 adversely impacts the ability of governmental entities to obtain frank opinions and advice from their own staff, other governmental entities and citizen groups.

Currently, the Open Meetings Act provides that governmental bodies and subordinate groups receiving or expending and supported in whole or in part by public funds are open to the public. HB 2299 expands the scope of meetings that are to be open to include advisory meetings. It is believed that HB 2299 would include advisory meetings consisting of the agency staff, interagency meetings, as well as meetings involving groups of private citizens. HB 2299 would significantly impede the ability of agency officials to obtain preliminary advice and hear concerns prior to making policy decisions. Additionally, HB 2299 would require providing notice of such advisory meetings to the same extent as for those meetings that fall within the Open Meetings Act, at an additional cost to the governmental entity.

The Department of Corrections is involved in a wide variety of advisory meetings. The department conducts meetings of the Community Corrections Advisory Committee, internal management meetings with Wardens and Regional Parole Directors, community relations meetings, and regional law enforcement meetings. Pursuant to current law, Community Corrections Advisory Committee meetings are open to the public. That group is established by statute and is involved in aspects of the Secretary of Corrections' administration of grant funds. In contrast, the Department's internal management meetings and meetings of regional law enforcement agencies are not open to the public, thus affording the participants the opportunity to provide their full and frank opinion to the Secretary or other department officials. The topics discussed at such meetings include the benefits and disadvantages of various policy issues, including those impacting

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security operations. Finally, various correctional facilities have organized meetings where community groups may regularly present and discuss issues affecting correctional facilities and the surrounding community. While these meetings are not statutorily required and do not result in binding action, they are open to the public as a venue for members of the community and department officials to discuss issues of mutual concern. Current law does not preclude a group from meeting with department officials in a private meeting in the event the issues are of a nature that the group wishes to present its concerns in private. The Department of Social and Rehabilitation Services is involved in such meetings.

SRS conducts a number of meetings with various groups representing constituents of the services provided by SRS or who have concerns regarding issues confronting that agency. These groups encompass foster care, patient care and disability programs. The issues that concern these people and their families and the discussions that they wish to engage in with SRS officials may be chilled if subject to the same open meeting requirements required when an agency is engaged in binding action. Additionally, HB 2299 requires that notice of such meetings be provided in the same manner as required by the Open Meetings Act.

The provision in Section 2 regarding the definition of a "subordinate group" does not in my opinion address the need of an agency head to be able to obtain the full and frank opinion of his or her staff. The term "subordinate group" is not used in new section 1 and therefore does not limit the scope of that section and its absolute opening of all advisory meetings. Additionally, the term subordinate group would not address advisory committees comprised of multiple agencies. Finally, governmental agencies engaged in advisory meetings would be required to bear the fiscal burden of providing notice of such meetings in the same manner as for meetings falling within the scope of the Open Meetings Act.

Based on the referenced concerns it is recommended that HB 2299 not be passed.

STATE OF KANSAS
DEPARTMENT OF WILDLIFE & PARKS

Office of the Secretary
900 SW Jackson, Suite 502
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HOUSE BILL NO. 2299

Testimony Provided to
Senate Committee on Elections and Local Government
March 7, 2001

As a executive agency of the state of Kansas, the Kansas Department of Wildlife and Parks is subject to the Kansas Open Meetings Act, and supports that law as a guarantee that state government is operated in an open manner. However, our department is concerned about potential unintended impacts of House Bill No. 2299, and we appreciate the opportunity to express these concerns to your Committee.

Under current law, any meeting to conduct the affairs or to transact the business of the Kansas Department of Wildlife and Parks is open to the public, because the department is an agency of the state supported by public funds. Consequently, the impact of HB 2299 must be to include other meetings of private individuals within the bounds of the Kansas Open Meetings Act, when those individuals function as an advisory body. As a department, we are concerned that this would negatively impact the public's ability to freely meet with our agency on issues of concern.

First, if HB 2299 were to pass, it would be difficult to determine how best to ensure compliance with the new law. The bill is written in broad terms, and probably intentionally so, to prevent loopholes that would make it easy to avoid becoming an official "advisory committee." Consequently, any time a group of three of more individuals meets with the agency to discuss matter of the mutual interest, that meeting may become subject to the Act.

More important, we believe that many such meetings may not occur, if the private individuals could not be assured that neither the media nor the public were invited to the meetings. Private individuals routinely meet with our department to discuss concerns ranging from management of land adjoining private property to law enforcement actions affecting their area, and we believe such discussions are important to good government. We fear that many people would not express themselves as openly in a public meeting. In addition, certain organizations could use such an opportunity to intentionally stifle open communication with our agency's constituents. To this point, animal rights activists have not played a major role in the natural resource management issues of Kansas, but a bill such as HB 2299 would certainly give them a new weapon if they were to take advantage of it.

For these reasons, our department is concerned that the negative impacts of HB 2299 may outweigh the positive intentions behind this legislation.

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03-07-01
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Kansas Department of Social and Rehabilitation Services
Janet Schalansky, Secretary

Docking State Office Building
915 SW Harrison, 6th Floor North
Topeka, Kansas 66612-1570

for additional information, contact:

Operations
Diane Duffy, Deputy Secretary

Office of Budget
J.G. Scott, Director

Office of Planning and Policy Coordination
Trudy Racine, Director

phone: 785.296.3271 ***fax:*** 785.296.4685

Senate Committee on Elections and Local Government
March 7, 2001

Testimony on House Bill 2299

Janet Schalansky, Secretary

785.296.3271

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03-07-01
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Kansas Department of Social and Rehabilitation Services
Janet Schalansky, Secretary

Senate Committee on Elections and Local Government
February 27, 2001

Testimony on House Bill 2299

I appreciate the opportunity to provide these written remarks. The Department of Social and Rehabilitation Services has several concerns with HB 2299. This bill would appear to make all advisory committee meetings open to the public in the same manner as under the Kansas Open Public Meetings law.

SRS works with numerous advisory groups, both formal and informal, on a regular basis and meetings with these groups are generally open to the public. However, we do on occasion use groups involving agency clients, patients, foster parents, and others, to assist us in working through various issues. In meeting with groups such as these, confidentiality becomes a significant concern. Since we are required by law to protect the privacy of many of these individuals, as well as much of the information discussed at these meetings, allowing the public to attend could create serious problems with privacy and confidentiality.

Additionally, if certain advisory meetings are made available to the public, it could have a chilling effect on the willingness of the participants to attend and discuss openly the real issues that need to be addressed. Our concern is that this may have a negative impact on our ability to obtain meaningful input and maintain a productive trusting relationship with our customers. Candor and privacy are very important in those settings. If people felt they could not discuss their own concerns and personal situations, these meetings would lose much of their value.

SRS strongly supports openness in government. However, we are afraid this bill will make it more difficult to have candid discussions with various groups we regularly rely on to help us work through issues and develop sound policies.

For these reasons it is respectfully requested that this Committee not act favorably on House Bill 2299.

STATE OF KANSAS

BILL GRAVES
Governor

Juvenile Justice Authority
Albert Murray, Commissioner

Jayhawk Walk
714 SW Jackson, Suite 300
Topeka, Kansas 66603
Telephone: (785) 296-4213 FAX: (785) 296-1412

TESTIMONY ON HB 2299
SENATE ELECTIONS AND LOCAL GOVERNMENT COMMITTEE
MARCH 7, 2001

The Juvenile Justice Authority is opposed to this bill. We are concerned that this bill might affect the way we do business and the way agency decisions are made with input from our partners. JJA, since its inception, has collaborated with community partners in various ways.

JJA staff meet with local case management staff on confidential issues regarding specific juveniles and specific placements. JJA staff also collaborate with local law enforcement to discuss security issues relating to operations of juvenile correctional facilities as well as specific crime supervision efforts in the community. We hold regular meetings with case management directors and juvenile correctional facility superintendents, both to give information and to receive feedback. Often, these meetings are held in quick response to developing issues, although the issue may not be confidential, there may be no time for public notices to meet open meeting requirements.

We establish training sessions for community case managers, community corrections officers and intake officers. We have regular meetings among JJA staff. We are concerned that these types of meetings would now be subject to open meetings laws. Participants might feel less open to providing potentially damaging information or feedback if that were to occur, essentially forcing the agency make decisions without the benefit of the advice of our partners.

One more example where we think open meetings would not be beneficial is when we have to give some negative information to our local partners and from that set priorities based upon feedback, so that all can establish a game plan before the news goes public. JJA has a close and productive relationship with our local partners. Impediments to candid and quick communication will only damage that partnership.

This bill could cut down on interagency collaborations that we've worked very hard to establish. For us, this means a relationship with SRS relating to foster care and intake and KDHE relating to foster care licensing issues. These relationships are already sensitive. Bringing in the public would not create an atmosphere in which all agencies can "lay their cards on the table."

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An additional question we have concerning this bill is, "who assumes the cost related to the involvement of others; for example, setting up a conference call, or the cost of notification to all parties?" Assuming the agency bears the cost, this could be expensive. It also poses a challenge to post all the meetings set by the agency.

Lastly, much of the business between JJA and certain local partners is already governed by the open meetings law. For example all grant requests from administrative counties are subject to open meeting requirements for both the local advisory boards and local county commissioners. The present system works for JJA and our local partners. We feel it is beneficial to effectively carrying out the duties of the agency. Therefore, we oppose this bill and any changes that might upset the relationships we've worked so diligently to achieve with our partners.

AM:HP:bt

STATE OF KANSAS

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KANSAS DEPARTMENT OF AGRICULTURE

Senate Elections and Local Government Committee

March 7, 2001

Testimony Regarding HB 2299

Written Statement of the Kansas Department of Agriculture

The Kansas Department of Agriculture (KDA) is pleased to provide information about possible effect of HB 2299 on department operations and the executive branch of state government.

First, it is important to note that KDA supports open government and is consistent in its adherence to the open meetings and open records laws. The people of the state deserve to have access to the workings of their government.

In Opposition to HB 2299

HB 2299 goes too far and it will close, rather than open, the doors to government. Its intent appears to be to open all interactions between the executive branch and those who advise it, but it would have the opposite effect. Defining an advisory committee so broadly — any advisory committee, council, task force, or other advisory body of three members or more — will insulate government further from the industries and citizens it affects. HB 2299 will stifle creative, two-way communication between diverse segments of the public and decision-makers in state government.

The definition of "subordinate group" is unclear, which could affect some interactions between employees and the head of an agency. The notice requirements for "open meetings" will preclude most informal discussions with industry, other stakeholders and even agency employees advising the secretary. Even weekly meeting with agency program managers, who advise the Secretary on day-to-day situations they encounter would require that notice be published and strict agenda and meeting times be followed.

Government loses touch with its stakeholders without regular interaction. It results in rules and regulations being administered bureaucratically without regard to changing conditions or technologies and the practical effects they have on real Kansans at the street level.

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Attachment 15

Peer Reviews and Systems Analyses

KDA interacts with many individuals in advisory capacities to help it ensure efficient and effective operation of its programs. Consumers, representatives of various industries, and peers from other state and federal programs have all been called on to help this department analyze its programs or industry conditions, update its operations, or identify and evaluate alternative potential policies.

In recent years, working advisory groups have completed peer reviews of our meat and poultry inspection and plant health programs. They have hammered out improvements to the Kansas pesticide law. They have analyzed our weights and measures program and our water appropriations process. They have developed alternative ways to improve the state's noxious weeds program. They have sought input on new developments and how they might affect the state, including new food safety rules, the organic agriculture industry and biotechnology. These are real working groups that require creativity, candid interaction and, sometimes, blood, sweat and tears. This intense and unglamorous work then becomes the basis of public discussions, policy proposals, legislative initiatives and program improvements.

KDA stands in opposition to HB 2299 because it will further isolate decision-makers and bureaucrats from the will of the people of Kansas. Their open and creative input is vital to the efficient, effective operation of the Kansas Department of Agriculture.

State of Kansas
Department on Aging

Connie L. Hubbell, Secretary

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Senate Elections and Local Government Committee
March 7, 2001

Kansas Department on Aging Opposition to HB 2299

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REPORT TO THE SENATE ELECTIONS AND LOCAL GOVERNMENT COMMITTEE ON HB 2299
BY
SECRETARY CONNIE HUBBELL
KANSAS DEPARTMENT ON AGING
March 7, 2001

Good afternoon, Madame Chair and members of the committee. Thank you for this opportunity to provide testimony in opposition to HB 2299.

The Kansas Department on Aging supports open meetings as they provide the agency information from providers, advocates, stakeholders, and customers that we use to make informed decisions to improve the quality of information and services we are able to provide to elder Kansans. I find advisory groups and task forces to be an invaluable source of information which we use to make provider and program decisions by the Department.

However, we can not support House Bill 2299 in its present form. We are concerned that the inclusion of "advisory committee", as presently defined in the bill, will have a chilling effect on open and frank discussion between myself, Department staff and our providers, advocates, stakeholders, and customers. Such advisory committee members may decide to withhold pertinent information or ideas for fear of how if could be perceived by the media or any public audience. This would limit the amount of information available to me or other KDOA staff in making important program and budget decisions.

In addition, I am concerned that providers, advocates, stakeholders, and customers may choose not to serve on advisory committees or even share their views on agency matters with us, if they cannot speak candidly or are concerned that their views will be shared in a public forum and available to the media.

Madame Chair and members of the committee, thank you for the opportunity to address the concerns KDOA has regarding the passage and implementation of HB 2299. Thank you.