

CONTINUATION SHEET

MINUTES OF THE SENATE UTILITIES COMMITTEE at on March 21, 2002 in Room 231-N of the Capitol.

After considerable discussion on amending **HB 3013** into **HB 2959** and the inclusion of Washburn University, the Chair closed the hearing on **HB 2959**.

Moved by Senator Brownlee, seconded by Senator Tyson, to amend **HB 3013** into **HB 2959** with conceptual amendment to include all other institutions of education. Motion carried. 8-1 (Attachment 8)

Moved by Senator Barone, seconded by Senator Lee, to amend **HB 2959** by inserting in (45) on page 6, language to include sewer or wastewater treatment systems, facilities or equipment, as shown in attached balloon. Motion carried. (Attachment 9)

Moved by Senator Tyson, seconded by Senator Lyon, to amend **HB 2959** by inserting in (45) on page 6 that language as set forth in the attached balloon prepared by the Kansas Press Association. Motion carried. (Attachment 10)

Moved by Senator Brownlee, seconded by Senator Lyon, to pass out **HB 2959** favorably as amended. Motion carried.

Approval of Committee minutes

Moved by Senator Lyon, seconded by Senator Taddiken, minutes of the Senate Utilities Committee meetings held on March 12, 2002, March 13, 2002, March 14, 2002 and March 18, 2002 be approved. Motion carried.

Chair announced no further meetings of the Senate Utilities Committee were scheduled for this session except if any of the five members wanted to take action on any bill currently in the committee.

Adjournment.

Respectfully submitted,

Ann McMorris, Secretary

Attachments - 10

HOUSE BILL No. 3013

By Committee on Federal and State Affairs

3-8

9 AN ACT concerning ethics; relating to disclosure requirements for cer-
10 tain consulting contracts.

11
12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. (a) On and after January 1, 2003, no faculty member or
14 other employee of a state educational institution in the unclassified serv-
15 ice under the Kansas civil services act, and amendments thereto, shall
16 serve as a consultant or perform consulting services, either individually
17 or as part of a business, unless such person has filed a disclosure statement
18 as required by this section. The disclosure statement shall contain the
19 following information:

- 20 (1) The names of the contracting parties;
- 21 (2) whether or not the faculty member has a substantial interest in
22 the consulting business;
- 23 (3) the date that the contract was approved by the institution as de-
24 termined by the board of regents;
- 25 (4) the amount of the consideration of the contract;
- 26 (5) a summary of the basic terms of the contract; and
- 27 (6) any other information required by rules and regulations promul-
28 gated by the board of regents.

29 The information required by paragraphs (1) through (5) shall be dis-
30 closed pursuant to any request therefor made under the open records
31 act.

32 (b) The disclosure statement required by this section, and amend-
33 ments thereto, shall be filed with the local information officer of the state
34 educational institution and such other locations as designated by the
35 board of regents by rule and regulation no later than 10 business days
36 after the contract has been signed by both parties. Each disclosure state-
37 ment, and amendments thereto, required by this section shall be available
38 for public inspection, under the provisions of the open records act, during
39 the normal business hours of any office in which it is filed. Disclosure
40 statements required under this section shall be maintained for a period
41 of five years after the faculty member or unclassified employee of a state
42 educational institution ceases to be employed by such state educational
43 institution.

Senate Utilities Committee
March 21, 2002
Attachment 1-1

1 (c) A separate disclosure statement, or amendment of an existing dis-
 2 closure statement, shall be filed for each consulting business owned, op-
 3 erated or maintained by such faculty member or other unclassified em-
 4 ployee in the unclassified service under the Kansas civil service act, and
 5 amendments thereto, of a state educational institution.

6 (d) No contract may be divided for the purpose of evading the
 7 requirements of this section. All contracts between the same parties dur-
 8 ing a calendar year shall be treated cumulatively as one contract for the
 9 purposes of this section.

10 Sec. 2. The statement required by section 1, and amendments
 11 thereto, shall be signed and dated by the individual making the statement
 12 and shall contain substantially the following:

13 STATEMENT OF CONSULTING INTERESTS

14 (name)
 15 (office or position of employment for which this statement is filed)
 16 (address) (body of statement, including the information prescribed by
 17 section 1 in form prescribed by Kansas board of regents)
 18 "I declare that this statement of substantial interests (including any
 19 accompanying schedules and statements) has been examined by me and
 20 to the best of my knowledge and belief is a true, correct and complete
 21 statement of all of my consulting interests and other matters required by
 22 law. I understand that intentional failure to file this statement as required
 23 by law or intentionally filing a false statement is a class B misdemeanor."
 24

25 _____ (date of filing) _____ (signature of person making the statement)

26 Sec. 3. As used in this act: (a) "Board of regents shall have the mean-
 27 ing ascribed to it in K.S.A. 76-711, and amendments thereto.

28 (b) "Business" shall have the meaning ascribed to it in K.S.A. 46-230
 29 and amendments thereto.

30 (c) "Consultant" shall have the meaning ascribed to it in K.S.A. 46-
 31 284 and amendments thereto. Consultant also includes any corporation,
 32 partnership or other business entity in which the individual has a sub-
 33 stantial interest.

34 (d) "Contract" shall have the meaning ascribed to it in K.S.A. 46-231
 35 and amendments thereto.

36 (e) "Person" shall have the meaning ascribed to it in K.S.A. 46-223
 37 and amendments thereto.

38 (f) "State educational institution" shall have the meaning ascribed to
 39 it in K.S.A. 76-711, and amendments thereto.

40 (g) "Substantial interest" shall have the meaning ascribed to it in
 41 K.S.A. 46-229 and amendments thereto.

42 Sec. 4. This act shall not apply to any faculty member or other em-
 43 ployee of a state educational institution in the unclassified service under

1-2

1 the Kansas civil service act, and amendments thereto:

2 (a) Who serves in an adjunct faculty position which is a part-time
3 position which is equivalent to 25% or less of a full-time position;

4 (b) whose consulting contract has an annual value of \$500 or less;

5 (c) who is an attorney if disclosure would require revealing the iden-
6 tity of a client or otherwise violate the lawyer-client privilege set forth in
7 K.S.A. 60-426, and amendments thereto; or

8 (d) who is a physician if disclosure would require revealing the iden-
9 tity of a patient or otherwise violate the physician-patient privilege set
10 forth in K.S.A. 60-427, and amendments thereto.

11 Sec. 5. (a) Failure to file any statement as required by this act or
12 intentionally filing a false statement is a class B misdemeanor.

13 (b) Failure to provide access to or a copy of a disclosure statement
14 as required by this act shall be deemed to be a violation of the open
15 records act and shall be subject to the provisions of K.S.A. 45-222 and
16 45-223 and amendments thereto.

17 Sec. 6. The Kansas board of regents shall adopt rules and regulations
18 necessary to implement this act on or before January 1, 2003.

19 Sec. 7. Sections 1 through 7, and amendments thereto, shall be
20 known and may be cited as the university consulting contract sunshine
21 act.

22 Sec. 8. This act shall take effect and be in force from and after its
23 publication in the statute book.

SENATE BILL No. 570

By Committee on Elections and Local Government

2-12

9 AN ACT concerning ethics; relating to disclosure requirements for cer-
10 tain consulting contracts.

11

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

13 Section 1. (a) On and after January 1, 2003, no faculty member or
14 other employee of a state educational institution in the unclassified serv-
15 ice under the Kansas civil services act, and amendments thereto, shall
16 serve as a consultant or perform consulting services, either individually
17 or as part of a business, unless such person has filed a disclosure statement
18 as required by this section. The disclosure statement shall contain the
19 following information:

20 (1) The names of the contracting parties;

21 (2) whether or not the faculty member has a substantial interest in
22 the consulting business;

23 (3) the date that the contract was approved by the institution as de-
24 termined by the board of regents;

25 (4) the amount of the consideration of the contract;

26 (5) a summary of the basic terms of the contract; and

27 (6) any other information required by rules and regulations promul-
28 gated by the board of regents.

29 The information required by paragraphs (1) through (5) shall be dis-
30 closed pursuant to any request therefor made under the open records
31 act.

32 (b) The disclosure statement required by this section, and amend-
33 ments thereto, shall be filed with the local information officer of the state
34 educational institution and such other locations as designated by the
35 board of regents by rule and regulation no later than 10 business days
36 after the contract has been signed by both parties. Each disclosure state-
37 ment, and amendments thereto, required by this section shall be available
38 for public inspection, under the provisions of the open records act, during
39 the normal business hours of any office in which it is filed. Disclosure
40 statements required under this section shall be maintained for a period
41 of five years after the faculty member or unclassified employee of a state
42 educational institution ceases to be employed by such state educational
43 institution.

Senate Utilities Committee

March 21, 2002

Attachment 2-1

1 (c) A separate disclosure statement, or amendment of an existing dis-
 2 closure statement, shall be filed for each consulting business owned, op-
 3 erated or maintained by such faculty member or other unclassified em-
 4 ployee in the unclassified service under the Kansas civil service act, and
 5 amendments thereto, of a state educational institution.

6 (d) No contract may be divided for the purpose of evading the
 7 requirements of this section. All contracts between the same parties dur-
 8 ing a calendar year shall be treated cumulatively as one contract for the
 9 purposes of this section.

10 Sec. 2. The statement required by section 1, and amendments
 11 thereto, shall be signed and dated by the individual making the statement
 12 and shall contain substantially the following:

13 STATEMENT OF CONSULTING INTERESTS

14 (name)

15 (office or position of employment for which this statement is filed)

16 (address) (body of statement, including the information prescribed by
 17 section 1 in form prescribed by Kansas board of regents)

18 "I declare that this statement of substantial interests (including any
 19 accompanying schedules and statements) has been examined by me and
 20 to the best of my knowledge and belief is a true, correct and complete
 21 statement of all of my consulting interests and other matters required by
 22 law. I understand that intentional failure to file this statement as required
 23 by law or intentionally filing a false statement is a class B misdemeanor."
 24

25 _____
 26 (date of filing)

_____ (signature of person making the statement)

27 Sec. 3. As used in this act: (a) "Board of regents shall have the mean-
 28 ing ascribed to it in K.S.A. 76-711, and amendments thereto.

29 (b) "Business" shall have the meaning ascribed to it in K.S.A. 46-230
 30 and amendments thereto.

31 (c) "Consultant" shall have the meaning ascribed to it in K.S.A. 46-
 32 284 and amendments thereto. Consultant also includes any corporation,
 33 partnership or other business entity in which the individual has a sub-
 34 stantial interest.

35 (d) "Contract" shall have the meaning ascribed to it in K.S.A. 46-231
 36 and amendments thereto.

37 (e) "Person" shall have the meaning ascribed to it in K.S.A. 46-223
 38 and amendments thereto.

39 (f) "State educational institution" shall have the meaning ascribed to
 40 it in K.S.A. 76-711, and amendments thereto.

41 (g) "Substantial interest" shall have the meaning ascribed to it in
 42 K.S.A. 46-229 and amendments thereto.

43 Sec. 4. (a) This act shall not apply to any faculty member or other
 employee of a state educational institution in the unclassified service un-

1 der the Kansas civil service act, and amendments thereto:

2 (1) Who serves in an adjunct faculty position which is a part-time
3 position which is equivalent to 25% or less of a full-time position; or

4 (2) whose consulting contract has an annual value of \$500 or less.

5 Sec. 5. (a) Failure to file any statement as required by this act or
6 intentionally filing a false statement is a class B misdemeanor.

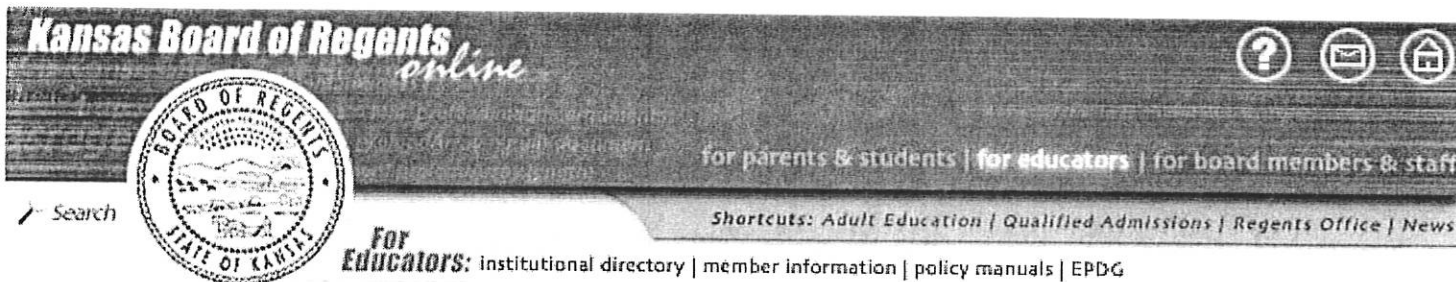
7 (b) Failure to provide access to or a copy of a disclosure statement
8 as required by this act shall be deemed to be a violation of the open
9 records act and shall be subject to the provisions of K.S.A. 45-222 and
10 45-223 and amendments thereto.

11 Sec. 6. The Kansas board of regents shall adopt rules and regulations
12 necessary to implement this act on or before January 1, 2003.

13 Sec. 7. Sections 1 through 7, and amendments thereto, shall be
14 known and may be cited as the university consulting contract sunshine
15 act.

16 Sec. 8. This act shall take effect and be in force from and after its
17 publication in the statute book.

2-3



for educators : policy manuals : Chapter 2

F. Faculty and Staff

page 1 | page 2

10. SUSPENSIONS, TERMINATIONS AND DISMISSALS

a. Felony Conviction

The Board has the authority to discharge any employee immediately upon final conviction of any felony.

b. Other

Faculty and staff may also be suspended, dismissed or terminated from employment for reasons of program discontinuance, financial exigency, or for just cause related to the performance of or failure to perform the individual's duties or for violation of the reasonable directives, rules and regulations, and laws of the institution, the Board and the state of Kansas or the United States.

c. Grievance Procedure

Each Regents institution shall establish and publish grievance procedures for use by faculty and staff in appealing employment decisions of the institution. The procedures shall provide the employee with notice of the action to be taken, the reasons for the action where appropriate, and an opportunity to be heard. A copy of all institutional grievance procedures shall be provided to the General Counsel of the Board for approval prior to becoming effective.

11. STANDARDS FOR NON-REAPPOINTMENT

a. Notice of non-reappointment should be given in writing in accordance with the following standards; such standards shall not be applicable to any administrative assignments.

(1) Not later than March 1 of the first academic year of service, if the appointment expires at the end of that year; or if a one-year appointment terminates during an academic year, at least three months in advance of its termination.

(2) Not later than December 15 of the second academic year of service, if the appointment expires at the end of that year; or, if an initial two-year appointment terminates during an academic year, at least six months in advance of its termination.

(3) At least twelve months before the expiration of an appointment after two or more years in the institution.

b. These statements shall apply even during periods of declared financial exigency, unless impossible, in which case notice shall be provided as early as feasible.

12. LEAVES

Persons appointed to student, unclassified positions do not accrue any of the leaves delineated below.

A. Sabbatical Leave

(1) Sabbatical leaves shall be approved by the chief executive officer of each institution in accordance with Board policy.

Senate Utilities Committee
March 21, 2002
Attachment 3-1

(2) Sabbatical Leave may be granted subject to the following conditions:

(a) In strictly meritorious cases, a full-time faculty member on regular appointment at any of the Regents institutions of higher education who has served continuously for a period of six years or longer at one or more of these institutions, may, at the convenience of the institution and upon the approval of the president or chancellor of the institution with which connected, be granted not to exceed one such leave of absence for each period of regular employment for the purpose of pursuing advanced study, conducting research studies, or securing appropriate industrial or professional experience; such leave shall not be granted for a period of less than one semester nor for a period of more than one year, with reimbursement being made according to the following schedule:

(i) for nine-months faculty members, up to half pay for an academic year, or up to full pay for one semester.

(ii) for twelve-months faculty members, up to half pay for eleven months, or up to full pay for five months.

(b) Provided: Regular salary is defined as the salary being paid at the time the sabbatical leave begins. Outside grant funds received by the University in support of the individual's scholarly efforts during his/her sabbatical leave may be used for supplemental salary, but total sabbatical leave salary in these instances may not exceed his/her regular salary. Provided further, That the number of faculty members to whom leave of absence with sabbatical pay is granted in any fiscal year shall not exceed four percent of the number of equivalent full-time faculty with rank of instructor or higher, or equivalent rank for the institution concerned for the fiscal year for which the leave of absence is granted; And provided further, That no faculty member will be granted leave of absence with sabbatical pay who does not agree to return to the service of the state institution granting the sabbatical leave for a period of at least one year immediately following the expiration of the period of leave. Persons failing to return to the institution granting sabbatical leave shall refund all sabbatical pay. Those who fail to remain for the full year of school service (9 to 12 months depending on annual term of employment) shall refund that portion of their sabbatical pay as represented by the portion of time they fail to serve.

B. Leave Without Pay

(1) A leave without pay for up to three years may be granted by the chief executive officer of the employing institution when such is judged by the chief executive officer to be in the best interest of the institution. No leave may be granted to any employee who has accepted a permanent position with another postsecondary education institution.

(2) Any extension of a leave without pay beyond three years requires the approval of the Board. The chief executive officer of the employing institution shall provide documentation of extraordinary circumstances justifying the extension of such leave beyond three years.

(3) Leaves without pay will not be regarded as a break in service; however, such leave will not count toward the earning of sabbatical leave nor will other than a scholarly leave count toward the tenure probationary period. Scholarly leave will count toward the tenure probationary period unless the employee and the institution agree in writing to the contrary at the time the leave is granted.

(4) During a leave of absence without pay, an employee's eligibility for health insurance shall be determined by and be in accord with the policies, rules and regulations of the State Employees Health Insurance Commission.

C. Leave With Pay

In order to fulfill jury duty, national guard duty, or other appropriate civic obligations, employees may be granted leave with pay pursuant to institutional policy.

D. Sick Leave for Unclassified Employees

(1) Unclassified employees shall accumulate sick leave at the rate of 3.7 hours per biweekly pay period with no limit on the number of hours which can be accumulated. Sick leave for unclassified employees on less than full-time appointments shall be reduced proportionately. Sick leave accumulations for persons on sabbatical leave shall be proportionate to the pay status during that leave. No sick leave shall be awarded for periods when unclassified employees are on leave without pay.

(2) Sick leave with pay may be granted only for the necessary absence from duty because of the personal illness, disability or legal quarantine of the employee; or the personal illness or disability of a member of the employee's family when the illness or disability reasonably requires the employee to be absent from work. "Personal illness or disability" shall be defined to include pregnancy, termination of pregnancy, adoption, childbirth and the recovery therefrom. "Employee's

3-2

family" shall include persons related to the employee by blood, marriage or adoption and minors residing in the employee's residence as a result of court proceedings pursuant to the Kansas code for care of children or the Kansas juvenile offenders code.

(3) If upon retirement an unclassified employee has accrued 800 or more hours of sick leave, the employee shall be compensated for accumulated sick leave in accordance with the provisions of K.S.A. 75-5517 as amended.

(4) If a separated unclassified employee returns within a year to an eligible position, the sick leave balance that the employee had upon termination is reinstated. Such reinstatement does not apply to an unclassified employee who retires and returns to the Board of Regents service after retirement.

(5) Each Regents institution shall adopt appropriate procedures for administering this policy.

E. Holiday Observations

(1) Regents institutions shall observe the following holidays for all unclassified and classified personnel: New Year's Day, Martin Luther King Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, Christmas Day

(2) Unclassified and classified personnel shall be entitled to such other special holidays as may be declared by the Governor. If any listed or special holidays fall during a time when classes are in session, such holidays shall not be observed by unclassified personnel. Classified employees required to work on such holidays shall be afforded compensatory time or compensation in accordance with Civil Service rules and regulations.

(3) Employees within the Regents system who accrue annual leave shall be entitled to one additional holiday per year to be taken at their discretion, subject to the advance approval of the individual's administrative superior.

F. Annual Leave for Unclassified Employees

(1) Persons appointed to unclassified positions of less than 12 months including faculty positions do not accumulate or earn annual leave. Their academic duties are closely related to the presence of students on campus. Student recesses offer persons appointed to positions which do not earn annual leave an opportunity to engage in research and perform other necessary professional duties. In consideration of the professional nature of a faculty position, faculty are expected to fulfill appropriate, professional and departmental responsibility throughout the academic year, including student recesses, exclusive of legal holidays. The academic year begins with student registration or similar duties in the Fall and continues for nine months.

(2) Persons appointed to full-time 12 month unclassified positions shall earn paid annual leave not to exceed 176 hours per fiscal year. Persons appointed to a less than full-time 12 month unclassified position shall earn annual leave on a pro-rated basis.

(3) Persons appointed to 12 month unclassified positions may accumulate a maximum of 304 hours of annual leave; provided, however, that no employee may receive, upon termination or retirement from employment or upon moving from a twelve-month annual leave earning position to a position for less than twelve months, payment for more than 176 hours of annual leave.

G. Bereavement Leave for Unclassified Employees

Unclassified employees may be granted leave with pay upon the death of a close relative. Such leave shall in no case exceed six working days. The employee's relationship to the deceased and necessary travel time shall be among the factors considered in determining whether to grant bereavement leave, and, if so, the amount of leave to be granted.

H. Shared Leave for Unclassified Employees

(1) All unclassified employees who accumulate sick leave shall be eligible for participation in the shared leave program of the state of Kansas.

(2) All unclassified employees who participate in the shared leave program may donate sick leave as long as the donation does not cause the accumulated sick leave balance of the donating employee to be less than 480 hours, unless the employee donates sick leave at the time of separation from service.

(3) Each Regents institution shall adopt appropriate procedures for administering this policy.

I. Family Medical Leave

3-3

- (1) For purposes of administering the Family Medical Leave Act (FMLA), all Regents institutions shall:
- (a) designate qualifying leave as Family Medical Leave whether or not the employee requests such a designation;
 - (b) consider the twelve-month period, within which an eligible employee who experiences a FMLA qualifying condition or circumstance, to begin concurrently with the first day of Family Medical Leave and any subsequent twelve-month period would begin the first time an eligible employee again experienced a FMLA qualifying condition or circumstance after the expiration of the first twelve-month period; and
 - (c) require employees whose leave is designated Family Medical Leave to substitute accrued paid leave for unpaid Family Medical Leave for up to twelve weeks within the applicable twelve-month period.
- (2) Any Regents institution may adopt a policy allowing a member of the faculty holding a tenure earning appointment who has taken Family Medical Leave to request an additional year in which to work toward tenure.
- (3) Subject to the above, each Regents institution shall adopt policy and procedures to provide leave to its employees pursuant to the FMLA.

13. COMMITMENT OF TIME, CONFLICT OF INTEREST, CONSULTING AND OTHER EMPLOYMENT

Preamble:

The Board of Regents encourages the Regents institutions to interact with business, industry, public and private foundations, and government agencies in order to assure the relevance of their missions of teaching, research and service; to provide for and facilitate the professional development of their faculty and unclassified staff; and to promote the rapid expansion and application of knowledge, gained through research, to the needs of Kansas, the region and the nation. With particular reference to such interaction, the Board of Regents considers it of utmost importance that university employees conduct their affairs so as to avoid or minimize conflicts of time commitments and conflicts of interest, and that the Regents institutions must be prepared to respond appropriately when real or apparent conflicts arise.

To those ends, the purposes of this policy are to: (i) educate about situations that generate conflicts; (ii) provide means for faculty and unclassified staff and the university to manage real or apparent conflicts; (iii) promote the best interests of students and others whose work depends on faculty direction; and (iv) describe situations that are prohibited. Every faculty member and member of the unclassified staff has an obligation to become familiar with, and abide by, the provisions of this policy. If a situation raising questions of real or apparent conflict of commitment or conflict of interest arises, affected faculty and/or unclassified staff must meet with their department chair, school dean or supervisor, report the conflict as described below, and eliminate the conflict or manage it in an acceptable manner.

a. General Principles

(1) Conflict of Time Commitment

(a) Attempts to balance university responsibilities outlined in the preamble with external activities, such as, but not limited to, consulting, public service or pro bono work, can result in real or apparent conflicts regarding commitment of time and effort. Whenever a faculty or staff member's external activities exceed reasonable time limits, or whenever an unclassified staff or faculty member's primary professional responsibility is not to the institution, a conflict of time commitment exists.

(b) Conflicts of commitment usually involve issues of time allocation. Faculty members and unclassified staff of Regents institutions owe their primary professional responsibility to their employing institutions, and their primary commitment of time and intellectual effort should be to the education, service, research and scholarship missions of said institutions. Faculty and unclassified staff should maintain a presence on campus commensurate with their appointments. The specific responsibilities, position requirements, employment obligations and professional activities that constitute an appropriate and primary commitment of time will differ across schools and departments, but said responsibilities, requirements, obligations and activities should be initially premised on a general understanding of full-time commitment for full-time faculty or unclassified staff of the institutions. Exceptions must be justified and shown to enhance the institutional mission.

(2) Conflict of Interest

(a) A conflict of interest occurs when there is a divergence between an individual's private, personal relationships or interests and his/her professional obligations to the university such that an independent observer might reasonably question whether the individual's professional actions or decisions are determined by considerations of personal benefit, gain or advantage.

3-4

(b) A conflict of interest or the appearance of it depends on the situation, and not necessarily on the character or actions of the individual. The appearance of a conflict of interest can be as damaging or detrimental as an actual conflict. Thus, individuals are asked to report potential conflicts so that appearances can be separated from reality.

(c) Potential conflicts of interest are not unusual in a modern university and must be addressed. For example, conflicts of interest can arise out of the fact that Regents institutions have as part of their mission the promotion of the public good by fostering the transfer of knowledge gained through university research and scholarship to the private sector. Two important means of accomplishing the institutional mission include consulting and the commercialization of technologies derived from research. It is appropriate that university personnel be rewarded for their participation in these activities through consulting fees and sharing in royalties resulting from the commercialization of their work. It is wrong, however, for an individual's actions or decisions made in the course of his or her university activities to be determined by considerations of personal financial gain. Such behavior calls into question the professional objectivity and ethics of the individual, and it also reflects negatively on the employing university. Regents institutions are institutions of public trust; faculty and unclassified staff must respect that status and conduct their affairs in ways that will not compromise the integrity of the university.

(d) Except in a purely incidental way, university resources, including but not limited to, facilities, materials, personnel, or equipment may not be used in external activities unless written approval has been received in advance from the institution's chief executive officer or his/her designee. Such permission shall be granted only when the use of university resources is determined to further the mission of the institution. When such permission is granted, the faculty member or unclassified staff member will make arrangements for reimbursement of the University for customarily priceable institutional materials, facilities or services used in the external activity. Such use may never be authorized if it violates the Regents policy on Sales of Products and Services.

(e) Proprietary or other information confidential to a Regents institution may never be used in external activities unless written approval has been received in advance.

(f) Faculty or unclassified staff may not involve University students, classified staff, unclassified staff or faculty in their external activities if such involvement is in any way coerced or in any way conflicts with the involved participants' required commitment of time to their university. For example, a student's grades or progress towards a degree may not be conditioned on participation.

b. Consulting and Other Employment

(1) Consulting for Other State of Kansas Agencies

Consulting by faculty members and employees of institutions under the jurisdiction of the Board for another institution under the jurisdiction of the Board, as well as consultation for other state agencies, shall be approved in advance by the institution or agency seeking these services and approved by the employee's home institution. The home institution shall effect payment through the regular process and shall receive reimbursement through the interfund transfer process.

(2) Consulting Outside the University

For members of the faculty, the Regents institution permits and, indeed encourages, a limited amount of personal, professional activity outside the faculty member's reasonably construed total professional responsibilities of employment by and for the institution, provided such activity: (a) further develops the faculty member in a professional sense or serves the community, state, or nation in a professional capacity; (b) does not interfere with the faculty member's teaching, research and service to the institution; and (c) is consistent with the objectives of the institution. Regular instructional service to other educational institutions is normally regarded as an inappropriate personal, professional activity. Without prior approval, faculty members on full-time appointments must not have significant outside

managerial responsibilities nor act as principal investigators on sponsored projects that could be conducted at their institution but instead are submitted and managed through another organization. Unless an exception is granted by the President, Chancellor or a designee, unclassified staff members may consult only on non-university time, including vacations.

(3) Other Employment

The Regents expect faculty and unclassified staff employed by the Regents institutions to give full professional effort to their assignments. It is, therefore, considered inappropriate to engage in gainful employment outside the Regents institution that is incompatible with institutional commitments. It is inappropriate to transact business for personal gain unrelated to the institution from one's institutional office, or at times when it might interfere with commitments to the institution. Participation in academic conferences, workshops and seminars does not usually constitute consulting or outside employment. However, organizing and operating such meetings for profit may be construed as consulting or outside

3-5

employment as defined in this policy.

c. Reporting Requirements

(1) Annual Reporting

As part of the annual appointment process, all faculty and unclassified staff with 100% time appointments must disclose to the university whether they or members of their immediate family (spouse and dependent children), personal household, or associate entities (e.g., corporations, partnerships or trusts) have consulting arrangements, significant financial or managerial interests, or employment in an outside entity whose financial or other interests would reasonably appear to be directly and significantly affected by their research or other university activities. For purposes of this policy, significant financial or managerial interests (or significant financial or other interests) means all holdings greater than \$10,000 or more than 5% ownership in a company. Faculty and unclassified staff members who hold fractional appointments and who have potential or possible conflicts of time commitments or conflicts of interest, as defined above, are also required to make the disclosures. Failure to submit the required reporting form, as approved by the Council of Presidents, will result in denial of the opportunity to submit research proposals to external funding agencies until the form is submitted and may result in discipline in accordance with University procedures. When the institution judges that the information submitted indicates that a conflict of time, commitment or interest does exist, the institution may require that the faculty or unclassified staff member submit additional information and explanation regarding that conflict. (9-21-95)

(2) Reporting Significant Ad Hoc Current or Prospective Conflicts As They Occur

Faculty and unclassified staff must disclose on the form approved by the Council of Presidents to the department chair or dean or supervisor on an *ad hoc* basis current or prospective situations that may raise questions of conflict of commitment or interest, as soon as such situations become known to the faculty or unclassified staff member.

(3) Reporting of Consulting

The faculty member must inform the chief academic officer, through the department chair or head and the dean, of all external personal, professional activities. For all such activities, except those single-occasion activities specified below, the faculty member must report in writing the proposed arrangements, and secure approval prior to engaging in the activities. Those personal, professional activities which occur within a single 24-hour period must be reported annually in writing as prescribed. For all activities concerned, the report should indicate the extent and nature of the activities, the amount of time to be spent in the activities, and the total amount of time spent or expected to be spent on all such outside activities during the current academic year.

(4) Disposition of Reports

All required reports shall be submitted in accordance with institutional requirements and shall be included in individual personnel files to be used for the determination of whether an individual is in compliance with this policy. Such reports will also be available to institutional research officers to permit certification and/or verification of compliance with federal regulations. Institutions must maintain these reports for a minimum of three years.

d. Use of University Name

The Name of the Board of Regents, a Regents institution or the Regents System may never be used as an endorsement of a faculty member or unclassified staff member's external activities without expressed and advance written approval of the University chief executive officer and/or the Board's Executive Director, as appropriate. Faculty members or unclassified staff members may list their institutional affiliation in professional books, articles and monographs they author or edit and in connection with professional workshops they conduct or presentations they make without securing approval.

e. Campus Policy Development and Enforcement

Additional rules and procedures for personal external activity, consistent with Board policy, will be established by each Regents institution. In situations in which the objectivity of a faculty or unclassified staff member could reasonably be questioned, or where apparent conflicts of interest exist, each Regents institution will establish an effective review mechanism to determine if a conflict of time or interest exists and to facilitate resolution of the conflict where possible, and to decide upon the appropriate sanctions when an unclassified staff or faculty member's activities have been determined to constitute a conflict. Such review mechanisms will include opportunity for appeal.

f. Distribution and Dissemination

This policy statement will be distributed upon initial appointment to all faculty and unclassified staff by each Regents institution.

14. HONORARIUMS

3-6

Institutions under the jurisdiction of the Board are authorized to pay honoraria as required for visiting lecturers upon authorization by the chief executive officer of the institution. (4-7-60)

15. POLITICAL ACTIVITY

- a. Faculty, administrators and other unclassified personnel are eligible to accept any public or political party position which does not involve any conflict of interest and does not require substantial time away from assigned duties or in other respects infringe upon them. Such eligibility covers membership on city commissions, school boards, planning groups, and county, state and national party committees and like organizations, by either appointment or election.
- b. The filing of a declaration of intent to become a candidate shall not affect the status or appointment of an unclassified member of a college or university staff; provided, however, such person at all times while a candidate shall properly and fully perform all of his or her assigned duties; provided further, however, that should such person while he or she is a candidate for office fail to perform all of his or her assigned duties, such person shall not receive any salary or benefits from the date of filing for office.
- c. Leave without salary or other benefits will be granted to those elected or appointed to public office requiring full time or lengthy sustained periods away from assigned duties, such as Congress, the State Legislature, and state and county offices or appointments to office falling within this category; effective, as to a person elected or appointed to Congress or the State Legislature, from the date such person takes the Oath of Office or the first day of the Legislative session and continuing until the adjournment of Congress or to a date no sooner than the last adjournment in April or sine die adjournment, whichever occurs first, of each regular and special session of the State Legislature; effective, as to other state and county offices, during the entire time a person serves as such officer. Leave without salary or other benefits shall not be required for any person serving in the State Legislature or for service on any committee during a period when the Legislature is not in regular or special session, provided that such person shall decline to accept all legislative compensation for such service, but such person shall be entitled to mileage and other expense allowances as provided by statute and paid by the Legislature.
- d. In the interest of the fullest participation in public affairs, personnel are free to express opinions speaking or writing as an individual in signed advertisements, pamphlets and related material in support of or opposition to parties and causes. There will be the commensurate responsibility of making plain that each person so doing is acting for himself and not in behalf of an institution supported by tax funds drawn from citizens of varying political and economic views. (12-19-66; 5-19-72; 2-15-85)

16. RETIREMENT

a. Retirement Benefits

(1) Eligible classified employees are covered by the Kansas Public Employees Retirement System as determined by law.

(2) Unclassified employees are covered by and/or eligible for those retirement benefits which are set forth in detail in Appendix E of this manual.

b. Phased Retirement Program

Subject to the provisions of K.S.A. 76-746 and K.A.R. 88-12-1 through 8, an unclassified employee aged 55 or older may enter into a written agreement with the employing institution whereby the unclassified employee will accept a position which is less than full-time but at least one-fourth time, and the institution will provide benefits on a full-time basis for up to five years.

c. Tax Sheltered Annuities

Subject to K.S.A. 74-4925 and 4925b, K.A.R. 88-10-1 through 12, and K.A.R. 88-11-1 through 12, eligible classified and unclassified employees may participate in a voluntary tax-sheltered annuities program. (11-21-86; 9-16-93; 9-15-94; 12-14-95)

17. HEALTH PROGRAM AND INSURANCE

The state of Kansas provides group health, life and long-term disability insurance to eligible classified and unclassified employees.

18. WITHHOLDING OF PAYCHECKS AND SETOFF OF AMOUNTS OWED

Each Regents institution shall be authorized to withhold payroll or other warrants issued by the State to, or setoff amounts owed by, any officer or employee of that institution against salary, other compensation or other amounts payable to such individual for any fine, fee or penalty owed by such officer or employee to the Regents institution. (11-21-80; 6-18-81; 5-21-82)

19. KANSAS TORT CLAIMS ACT/LEGAL DEFENSE OF EMPLOYEES

Lawsuits against state employees, including faculty and staff, are controlled by and handled pursuant to the provisions of the Kansas Tort

3-7

Claims Act (K.S.A. 75-6101 *et seq.*). The Act seeks to limit liability and provides that the state of Kansas will, subject to certain limitations and qualifications, defend and indemnify state employees, including faculty and staff, sued as a consequence of actions taken by state employees while acting within the scope of their employment.

Subject to institutional policies, employees of Regents institutions who are sued for any alleged nonfeasance, misfeasance or malfeasance of the duties of their position should immediately notify institutional legal counsel and/or the General Counsel to the Board to initiate an appropriate request to the Attorney General for legal defense. Specific questions about protections provided pursuant to the Kansas Tort Claims Act or the legal defense of employees may be referred to institutional legal counsel and/or the Board's General Counsel. (6-30-94)

[page 1](#) | [page 2](#)

Kansas Board of Regents
Advancing Knowledge - Expecting Excellence



all content ©2000-2002
Kansas Board of Regents
all rights reserved.

[For students & families](#) | [For educators](#) | [For board members](#)
[Adult Education](#) | [Qualified Admissions](#) | [Regents Office](#) | [News](#)
[Home](#) | [FAQ](#) | [Contact KBOR](#)

3-8

hearing the appeal. Such appeal shall be conducted informally, and both the appellant and the director may be present in person or by counsel, and both may present evidence and argument. The secretary shall make a timely disposition of the appeal and shall furnish the agency and the director a copy of his or her decision. The filing of a notice of appeal or the pendency of an appeal shall not suspend the final decision or final action from which the appeal is taken.

(b) Any state agency may appeal to the governor from final decisions or final actions of the secretary of administration by filing a written notice of appeal with the governor, signed by the head of the agency, with a copy to the secretary of administration. Such notice of appeal shall state in clear and concise language the final decision or final action of the secretary of administration that is the subject of the appeal, and the grounds upon which such appeal is based. Such notice of appeal shall be delivered to the governor's office or mailed to the governor within ten (10) working days after the final decision or final action appealed from becomes effective. The governor shall thereupon set the day and hour for hearing the appeal. Such appeal shall be conducted informally, and both the appellant and the secretary of administration may be present in person or by counsel, and both may present evidence and argument. The governor shall make a timely disposition of the appeal and shall furnish the agency and the secretary a copy of his or her decision. The filing of a notice of appeal or the pendency of an appeal shall not suspend the final decision or final action from which the appeal is taken. (Authorized by K.S.A. 75-3747; effective May 1, 1979.)

**Article 13.—RECORDS, REPORTS,
RESEARCH AND EVALUATION
OF PERSONNEL SYSTEM**

1-13-1. (Authorized by K.S.A. 75-3747; effective May 1, 1979; revoked May 1, 1983.)

1-13-1a. Content and disclosure of information in employees' official personnel records. (a) The official personnel record of each state employee shall include the following information:

(1) documents showing the employee's hires, transfers, promotions, demotions, separations, changes of pay rates, leaves of absence, or other changes in employment status;

(2) performance reviews, letters of reprimand and letters of rebuttal thereto, and letters of commendation;

(3) applications for the positions for which the employee was hired;

(4) letters of disciplinary action; and

(5) such other information the director of personnel services deems appropriate.

(b) The official personnel record of each state employee shall not contain information prohibited by federal law.

(c) The official personnel record of each state employee shall be transferred with the employee if the employee transfers to another agency.

(d) Except as otherwise provided in this regulation and the Kansas open records act, K.S.A. 45-215 et seq., information contained in each state employee's official personnel record shall not be open to public inspection.

(e) Upon inquiry of any individual, the division or the state agency where an employee is employed shall disclose the following information concerning an employee:

(1) the name of the employee;

(2) the employee's current job title;

(3) the employee's current or prior pay; and

(4) the employee's length of employment with the state.

(f) Upon inquiry of a prospective employer, the division or the state agency in which an employee is employed may disclose the following additional information concerning an employee:

(1) the name of the employing state agency;

(2) the length of time the employee has served in the employee's current position;

(3) any letters of commendation; and

(4) any documents regarding personal conduct and work performance to the extent consistent with K.S.A. 44-117.

(g) When an individual from one of the following agencies, in carrying forth the individual's official duties, establishes a need for information contained in an employee's official personnel record, appropriate personnel from those agencies shall be permitted to access the personnel record:

(1) the Kansas department of administration;

(2) the Kansas attorney general's office, including the Kansas bureau of investigation;

(3) the federal equal employment opportunity commission and Kansas human rights commission;

(4) the Kansas civil service board;

(5) legislative post audit;

76-21

(6) the state agency employing that employee; and

(7) child support enforcement specialists of the Kansas department of social and rehabilitation services.

(h) Any current or former employee, or an individual or organization authorized in writing by the current or former employee, may review the employee's official personnel record maintained in a state agency or in the division. The request shall be made in writing to the appointing authority or the director, respectively. The agency shall place in the employee's personnel record a copy of the written request and the written authorization from the employee. The review shall be consistent with the conditions established by the appointing authority or the director, respectively, and at a time and place mutually convenient to the parties.

(i)(1) Upon request to the appointing authority or designee or the director, respectively, the head of any state agency or a designee, having a proper interest and an established need to review the personnel record of an employee in another state agency, may review the employee's official personnel record, including applications for employment and performance reviews, whether the personnel record is maintained in a state agency or in the division.

(2) Each state agency responding to job-related reference and performance questions from another state agency shall answer the questions in good faith.

(3) If a prospective employer that is not part of Kansas state government requests information about a current or former state employee as part of a reference check, the response of the appointing authority shall comply with K.S.A. 1996 Supp. 44-119a.

(j) The official personnel record of any specifically named employee shall be made available for inspection in connection with litigation, pursuant to the terms of an order entered by a judge of any federal, state, or municipal court properly having jurisdiction over such litigation. (Authorized by K.S.A. 1996 Supp. 75-3747; implementing K.S.A. 75-2950, K.S.A. 75-3746, and K.S.A. 1996 Supp. 45-221; effective May 1, 1983; amended Dec. 27, 1993; amended Dec. 17, 1995; amended May 31, 1996; amended June 20, 1997.)

1-13-2 to 1-13-4. (Authorized by K.S.A.

75-3747; effective May 1, 1979; revoked May 31, 1996.)

Article 14.—LAYOFF PROCEDURES AND ALTERNATIVES TO LAYOFF

1-14-1 to 1-14-5. (Authorized by K.S.A. 75-2965, 75-2966, 75-2968; effective Jan. 1, 1967; revoked May 1, 1979.)

1-14-6. (Authorized by K.S.A. 75-3747; implementing K.S.A. 75-2948; effective May 1, 1984; amended January 18, 1994; revoked May 31, 1996.)

1-14-7. Agency submission of layoff notice to director. (a) When submitting a layoff notice to the director, the appointing authority shall list the reason for the proposed layoff. As established by K.S.A. 75-2948, as amended, the reasons for proposing a layoff shall be limited to:

- (1) a shortage of work or funds;
- (2) the reinstatement of an employee returning from authorized leave; or
- (3) the abolition of a position or other material change in duties or organization.

(b) Any appointing authority proposing a layoff shall give written notice of the proposed layoff to the director, and a copy of the notice to the secretary of administration, at least 45 calendar days before the proposed effective date of the layoff. In cases of extenuating circumstances, the 45-day notice requirement may be waived by the director. However, in no case shall notice of layoff to the director be less than 30 days prior to the proposed effective date of the layoff.

(c) In the notice, the appointing authority shall specify:

- (1) the reason or reasons for the layoff;
- (2) the class, classes, or class series in which the layoff is to occur;
- (3) the estimated number of employees to be laid off;
- (4) the proposed effective date of each layoff;
- (5) the position or positions to be vacated by layoff; and
- (6) the layoff scores of employees identified in subsection (a) of K.A.R. 1-14-9.

(d) In addition to the information required under subsection (c), the notice shall include the following information:

- (1) a list of the agency's organizational units;
- (2) a description of any geographic areas to which the layoffs will be limited; and

Cedar Creek Properties, Inc. v. Board of Johnson County Comm'rs

annexation for the stated reason she had always had a hankering to be a Lenexa resident. What would be the scope of the "hindering or preventing" determination? It would be confined simply to how the annexation of the Purvis tract by Lenexa would affect the area. Forgetting about the agreement among the various municipalities for the moment, let us assume the Purvis tract, called tract A, lies much closer to Overland Park than to Lenexa. If the Purvis tract lies between tract B and Overland Park, granting the annexation could seriously hinder and certainly delay development of tract B. The extension of Lenexa services to the area could be 20 or 30 years away. Overland Park might be ready to expand its services within five years. Certainly, this factor would be extremely important in determining whether or not to grant annexation to Lenexa. This scenario underscores the problem with considering the proposed use of the property in determining whether or not to grant the annexation petition. Let us further assume Miss Purvis' wish to be part of Lenexa is granted. Six months later, she petitions Lenexa for a special use permit to operate a rock quarry on the property. Even if it could be established that operation of a rock quarry had been her real goal all along (she had a lucrative option contract with the Holland Corporation in the drawer which predated the annexation proceedings), this fact could never be used to invalidate the annexation. The irate adjoining landowners would have their forum in the special use permit proceedings.

The fact that the proposed use is "up front" in the case before us, coupled with the fact Lenexa has granted the permit (which is on appeal at the present time) should not, in my opinion, expand the issues in the annexation to include those properly in the special use permit proceedings. As the district court held in its memorandum opinion, to interject the proposed usage into the annexation proceeding improperly transfers Lenexa's zoning prerogatives to the board of county commissioners.

I can well understand the adjoining landowners' concerns herein, but their forum is the special use permit proceedings, not the annexation proceedings. I would affirm the district court.

State Dept. of SRS v. Public Employee Relations Board

No. 65,739

STATE OF KANSAS, DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES, PARSONS STATE HOSPITAL AND TRAINING CENTER, *Appellant*, v. PUBLIC EMPLOYEE RELATIONS BOARD OF THE KANSAS DEPARTMENT OF HUMAN RESOURCES, *Appellee*.

(815 P.2d 66)

SYLLABUS BY THE COURT

1. ADMINISTRATIVE LAW—*Interpretation of Statute by Agency Responsible for Enforcing Statute—Interpretation Entitled to Judicial Review.* The interpretation of a statute by an administrative agency charged with the responsibility of enforcing that statute is entitled to judicial deference.
2. OPEN RECORDS ACT—*Interpretation of Act by Kansas Public Employee Relations Board—Interpretation Not Accorded Judicial Deference because Board Not Responsible for Enforcing Act.* The Kansas Public Employee Relations Board is not statutorily charged with the responsibility of enforcing the Kansas Open Records Act, K.S.A. 45-215 *et seq.*, therefore, its interpretation of the Act is not entitled to judicial deference. The administrative interpretation of the Act is given consideration, but the final construction of the Act rests with the courts.
3. SAME—*Public Records—Agency Not Given Unregulated Discretionary Power to Refuse to Release Information Sought by Public.* The Kansas Open Records Act, K.S.A. 45-215 *et seq.*, does not allow an agency unregulated discretionary power to refuse to release information sought by the public. The stated policy of the Act is that all public records are to be open to the public for inspection unless otherwise provided in the Act.
4. SAME—*Public Records—Public Inspection of Governmental Records.* As used in the Kansas Open Records Act, K.S.A. 45-215 *et seq.*, "public" means of or belonging to the people at large. "Public inspection" refers to the right of the public to inspect governmental records when there is a laudable object to accomplish or a real and actual interest in obtaining the information. Neither the Kansas Public Employee Relations Board nor the National Association of Government Employees are subject to the limitations of the Act when acting under the government sanctioned activities of the Public Employer-Employee Relations Act, K.S.A. 75-4321 *et seq.*
5. EMPLOYER AND EMPLOYEE—*Kansas Open Records Act—Social and Rehabilitation Services Required to Disclose to Employee Union the Home Addresses of Hospital Employees.* Under the facts of this case, the trial court did not err in finding that, under the Kansas Open Records Act and Department of Administration regulation K.A.R. 1-13-1a, SRS could not refuse to comply with the Kansas Public Employee Relations Board order to disclose the home addresses of hospital employees.

Appeal from Shawnee district court; THOMAS R. CONKLIN, judge. Opinion filed July 12, 1991. Affirmed.

Linda J. Fund, of State Department of Administration, argued the cause and was on the briefs for appellant.

Don Doesken, of State Department of Human Resources, argued the cause and was on the brief for appellee.

David W. Hauber, of Boddington & Brown, Chtd., of Kansas City, was on the brief for *amicus curiae* Kansas University Nurses Association.

The opinion of the court was delivered by

LOCKETT, J.: Kansas Department of Social and Rehabilitation Services (SRS) appeals the district court's affirmance of the Kansas Public Employee Relations Board (PERB) order that SRS supply the National Association of Government Employees (Union) with employees' home addresses. SRS claims the trial court erred: (1) in applying an improper scope of review to the PERB order; (2) in finding that SRS could not refuse to comply with the PERB order under the provisions of the Kansas Open Records Act (KORA), K.S.A. 45-215 *et seq.*, and Department of Administration regulation K.A.R. 1-13-1a; and (3) in subjecting SRS to the penalties of K.S.A. 21-3914, which prohibits use of information derived from public records for commercial use.

The facts are uncontroverted. Parsons State Hospital and Training Center (Hospital) is a public agency. The Union is the local employee organization certified as the exclusive representative for all employees holding permanent, probationary, conditional, part-time, and intermittent appointments with the Hospital.

The Union requested the names and addresses of all persons in the bargaining unit in order to communicate with them on matters of representation. The Hospital provided the names but refused to provide the home addresses. The Union filed a complaint with PERB, alleging SRS and the Hospital committed a prohibited practice by denying the rights accompanying certification or formal recognition.

After a hearing examiner ordered SRS and the Hospital to release the employees' addresses to the Union, SRS and the Hospital appealed the order to PERB. At the Board hearing, the Union claimed that SRS's refusal to provide the addresses of the employees in the bargaining unit was a denial of the rights to

which it was entitled. SRS argued (1) the Public Employer-Employee Relations Act (PEERA), K.S.A. 75-4321 *et seq.*, does not require it to provide the recognized employee organization with home addresses, and (2) KORA and K.A.R. 1-13-1a prohibit it from releasing the employees' home addresses.

The Board held that although KORA provides the employer with discretion to disclose the information, the employees have no reasonable expectation that their home addresses would not be disclosed to their bargaining unit. The Board adopted the recommendation of the hearing examiner and ordered the Hospital to provide the names and home addresses of each person in the bargaining unit to the Union within 30 days. In accordance with K.S.A. 45-220(c), PERB's order conditioned release of home addresses on the Union's certification that the Union would not use the list or make the list available to another who might use the information to sell property or services for commercial gain. SRS appealed to the district court of Shawnee County.

The district court found that, under the Act for Judicial Review and Civil Enforcement of Agency Actions, K.S.A. 77-601 *et seq.*, the burden of proving the invalidity of PERB's action is upon the party asserting invalidity and the court is limited in granting relief. K.S.A. 77-621. The district court noted that "[i]n reviewing questions of law, the trial court may substitute its judgment for that of the agency, although ordinarily the court will give great deference to the agency's interpretation of the law." *Wallis v. Secretary of Kans. Dept. of Human Resources*, 236 Kan. 97, 101, [689 P.2d 787] (1984)." The district court ordered the Hospital to provide the Union with the names and home addresses of all persons in the bargaining unit when the Union certified that it would not improperly use the employees' addresses. SRS again appealed.

SRS argues PERB has neither statutory authority to supplement or interpret KORA nor the expertise to interpret Department of Administration regulations. It argues interpretations of only those regulations which are within an agency's area of expertise are entitled to deference by the court; therefore, PERB's interpretations of KORA and K.A.R. 1-13-1a are beyond PERB's expertise and the district court erred by giving deference to PERB's inter-

5-2

pretations. SRS contends the trial court applied an incorrect scope of review. We agree.

The interpretation of a statute by an administrative agency charged with the responsibility of enforcing that statute is entitled to judicial deference. This deference is sometimes called the doctrine of operative construction. Further, if there is a rational basis for the agency's interpretation, it should be upheld on judicial review. If, however, the reviewing court finds that the administrative body's interpretation is erroneous as a matter of law, the court should take corrective steps. The determination of an administrative body as to questions of law is not conclusive and, while persuasive, is not binding on the courts. See *Kansas Bd. of Regents v. Pittsburg State University Chap. of K-NEA*, 233 Kan. 801, 809-10, 667 P.2d 306 (1983).

PERB is not statutorily charged with the responsibility of enforcing KORA; therefore, its interpretation of KORA is not entitled to judicial deference. The interpretation of KORA is a question of law and it is our function to interpret the Act to give it the intended effect. *U.S.D. No. 352 v. NEA-Goodland*, 246 Kan. 137, 140, 785 P.2d 993 (1990). The administrative interpretation of KORA is given consideration and effect, but the final construction of the Act rests with the courts. See *National Gypsum Co. v. Kansas Employment Security Bd. of Review*, 244 Kan. 678, 682, 772 P.2d 786 (1989).

Normally, the scope of judicial review of an administrative board's findings of fact and conclusions of law is governed by the Kansas Act for Judicial Review and Civil Enforcement of Agency Actions. K.S.A. 77-601 *et seq.* The Act for Judicial Review and Civil Enforcement of Agency Actions, however, does not apply to agency actions governed by the provisions of KORA. K.S.A. 77-603(c)(6). KORA provides the district court of the county where the records are located with jurisdiction to enforce the Act. K.S.A. 1990 Supp. 45-222. Any action to enforce the Act in the court is determined *de novo*.

The trial court erred in giving deference to PERB's interpretation of KORA and in not determining the matter *de novo*, but error does not require reversal.

SRS next contends the trial court erred in finding SRS could not refuse, under KORA and K.A.R. 1-13-1a, to provide the home addresses of the employees to the Union.

Pertinent language in K.A.R. 1-13-1a provides:

"(b) Except as otherwise provided in this regulation, information contained in each state employee's official personnel file shall not be open to public inspection.

"(c) Upon inquiry of any individual, the division of personnel services, or personnel in the state agency where an employee is employed, may disclose the following information concerning an employee:

"(1) Confirmation that an individual is employed by the state;

"(2) name of employing state agency;

"(3) current title and job position;

"(4) current or prior rates of pay;

"(5) length of employment with the state;

"(6) length of time the employee has served in the employee's current job position; and

"(7) letters of commendation."

SRS apparently argues that the regulation does not expressly authorize disclosure of home addresses; therefore, the regulation prohibits disclosure.

KORA is an affirmative act requiring disclosure of public records unless the request places an unreasonable burden on the agency or, if the request is repetitive in nature, is intended to disrupt the agency's function. K.S.A. 45-216 and K.S.A. 45-218(e).

KORA designates 35 categories of records that public agencies "shall not be required to disclose." K.S.A. 45-221(a). K.S.A. 45-221 does not prohibit disclosure but makes the decision to release the information discretionary with the custodian of the records.

SRS relies on two exceptions enumerated in KORA. K.S.A. 45-221 provides:

"(a) Except to the extent *disclosure is otherwise required by law*, a public agency shall not be required to disclose:

"(4) Personnel records, performance ratings, or individually identifiable records pertaining to employees or applicants for employment except that *this exemption shall not apply* to the names, positions, salaries and length of service of officers and employees of public agencies once they are employed as such.

5-3

State Dept. of SRS v. Public Employee Relations Board

“(30) Public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.” (Emphasis added.)

Statutory words are presumed to have been and should be treated as consciously chosen and, with understanding of the ordinary and common meaning, intentionally used with the legislature having meant what it said. *Kansas Ass'n of Public Employees v. Public Employee Relations Bd.*, 13 Kan. App. 2d 657, 661-62, 778 P.2d 377 (1989). SRS argues that if there is any ambiguity in the plain language of K.S.A. 45-221(a)(4), the legislative history clearly establishes that the legislature intended unconditionally to exempt public employee personnel files from disclosure.

The original version of KORA exempted “[p]ersonnel records and performance ratings, except that this exemption shall not apply to the names, positions, salaries, and lengths of service of officers and employees of public agencies.” 1983 H.B. No. 2327. SRS contends the legislature, in expanding the language of (a)(4) to include “or individually identifiable records pertaining to employees or applicants for employment,” intended that any information pertaining to an applicant or an employee that is individually identifiable is exempted from disclosure. SRS contends that, because the plain language of K.S.A. 45-221(a)(4) expressly requires only the name, position, salary, and length of service of officers and employees of the public agency to be disclosed to the public, the employee’s address is not to be disclosed.

PEERA recognizes the State has a basic obligation to protect the public by assuring, at all times, the orderly and uninterrupted operations and functions of government. The purpose of the Act is to obligate public agencies, public employees, and their representatives to enter into discussions with affirmative willingness to resolve grievances and disputes relating to conditions of employment, acting within the framework of law. It is also the purpose of this Act to promote the improvement of employer-employee relations within the various public agencies of the State and its political subdivisions by providing a uniform basis for recognizing the right of public employees to join or to refrain from joining organizations of their own choice and be represented

State Dept. of SRS v. Public Employee Relations Board

by such organizations in their employment relations and dealings with public agencies.

PERB argues that its order carries out the purposes of PEERA authorized by K.S.A. 75-4321, which cannot be achieved without good communication between employees and the organizations elected to represent them. PERB states the purpose of collective bargaining is better served when the public employer discloses the employee’s home address because: (1) it allows an employee organization to communicate with employees without disrupting the workplace; (2) communication is effected without interference from management to preserve the backstage nature of communication between the organization and the employees in the unit; (3) it improves communication with workers who do not have a regular worksite or whose locations are spread over a large geographical area; and (4) it allows communication with all of the employees in the bargaining unit, even those who are without a phone, who live in a different city, or who cannot be easily located. In addition, PEERA also requires that PERB have access to home addresses of the employees for verification of showing of interest in cards and petitions, investigation of prohibited practice complaints, and mailing of ballots for representation elections.

PERB asserts that SRS cannot use K.S.A. 45-221(a)(4) or (30) of KORA to circumvent the public policy of PEERA and PERB’s order to disclose. PERB argues that its order to provide the addresses is one “otherwise required by law” under K.S.A. 45-221(a). PERB cites other jurisdictions that have interpreted the word “law” to include an administrative regulation issued pursuant to a statute. See *Goodman v. Superior Court in & for Maricopa*, 136 Ariz. 201, 203, 665 P.2d 83 (1983); *Van Gordon v. Ore. State Bd. of Dental Examiners*, 63 Or. App. 561, 666 P.2d 276 (1983); *Valley St. Bank, et al. v. Farmers St. Bank*, 87 S.D. 614, 620, 213 N.W. 2d 459 (1965).

The fundamental rule of statutory construction is that the purpose and intent of the legislature governs when the intent can be ascertained from the statute. In construing statutes, the legislative intention is to be determined from a general consideration of the entire act. Effect must be given, if possible, to the entire act and every part thereof. To this end, it is the duty of the court, as far as practical, to reconcile different provisions so as

5-4

to make them consistent, harmonious, and sensible. *State v. Adee*, 241 Kan. 825, 829, 740 P.2d 611 (1987).

The Kansas Open Meetings Act, K.S.A. 75-4317 *et seq.*, and KORA were passed by the legislature to insure public confidence in government by increasing the access of the public to government and its decision-making processes. This increases the accountability of governmental bodies and deters official misconduct. The public policy stated in KORA is that all records are "open for inspection by any person unless otherwise provided by this act." K.S.A. 45-216(a). The burden of proving that an item is exempt from disclosure is on the agency not disclosing. K.S.A. 45-218.

KORA does not allow an agency unregulated discretionary power to refuse to release information sought by the public. The stated policy of KORA is that all public records are to be open to the public for inspection unless otherwise provided in the Act. As used in KORA "public" means "of or belonging to the people at large." "Public inspection" refers to the right of the public to inspect governmental records when there is a laudable object to accomplish or a real and actual interest in obtaining the information. Neither PERB nor the Union are subject to the limitations of KORA when acting under the government sanctioned activities of PEERA. The trial court did not err in finding that SRS could not refuse, under KORA and Department of Administration regulation K.A.R. 1-13-1a, to comply with the PERB order to disclose the home addresses.

Finally, SRS claims the district court erred when it failed to determine whether the Union's access to public employees' addresses will subject SRS to possible criminal prosecution for violation of K.S.A. 21-3914, which provides:

"(a) No person shall knowingly sell, give or receive, for the purpose of selling or offering for sale any property or service to persons listed therein, any list of names and addresses contained in or derived from public records except:

"(4) to the extent otherwise authorized by law.

"(b) Violation of this section is a class C misdemeanor."

The trial court ordered the Union to execute a certification that it would not use the names for commercial purposes. This

is consistent with K.S.A. 45-220(c) in that an agency may require a person or an entity requesting information under KORA to provide written certification that its reason for obtaining the names is not for commercial purposes.

SRS claims a certification is not adequate protection against the Union's possible misuse of home addresses to solicit the sales of ancillary services commonly provided by employee unions. We find no merit in this contention. Even if the Union uses the information for a commercial purpose, SRS would not be subject to the criminal penalty of K.S.A. 21-3914 because the disclosure was required by law.

Affirmed.

5-5

State of Kansas

Senate Chamber



COMMITTEE ASSIGNMENTS

RANKING MINORITY: COMMERCE
UTILITIES

MEMBER: WAYS & MEANS
ECONOMIC DEVELOPMENT
PENSIONS, INVESTMENTS & BENEFITS
STATE BUILDING CONSTRUCTION

MEMBER: NCSL COMMITTEE EDUCATION, LABOR &
WORKFORCE DEVELOPMENT

JIM BARONE
STATE SENATOR, THIRTEENTH DISTRICT
CRAWFORD, CHEROKEE AND BOURBON COUNTIES

HOME ADDRESS:
611 W. LEIGHTON
FRONTENAC, KANSAS 66763
(620) 231-4900
HOME FAX: (620) 231-6611

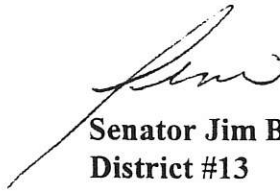
Democratic Agenda Chairman

ROOM 504-N, STATE CAPITOL
TOPEKA, KANSAS 66612-1504
(785) 296-7370
1-800-432-3924

STATEMENT ON HB 3013 AN ACT CONCERNING ETHICS RELATING TO DISCLOSURE OF REQUIREMENTS FOR CERTAIN CONSULTING CONTRACTS

Thanks for the opportunity to provide a statement regarding HB 3013. The attached news article clearly demonstrates the need for appropriate and thorough public disclosure. The KSU professor who was testifying before the Senate Commerce Committee on a Southwestern Bell deregulation plan just happened to be an individual who previously worked in my organization while we were both employed at Southwestern Bell. And, Mr. Chairman, because of this past relationship, I was the only person on the committee, and very likely in the room, with the exception of current Bell employees, who knew of the past employment relationship with Bell. As Chairman Brownlee said, if these past relationships were disclosed, "it cast a whole new light on his message," referring to the professor's testimony. I support the need for full and complete disclosure when independent experts who are state employees, or for that matter, any state employee, are offering "expert testimony." These past and, very likely, present business relationships of these witnesses certainly can influence their "expert thinking."

Mr. Chairman, thank you for the opportunity to provide this written statement. I regret I cannot appear in person due to Senate floor activities but will be delighted to share further insight or answer further questions should you or members of the committee need additional clarification.


Senator Jim Barone
District #13

Senate Utilities Committee
March 21, 2002
Attachment 6-1

Date: 527 3-2-02

- | | | |
|----------------------------|-------------------------------|----------------------------|
| () Topeka Capital Journal | () Hutchinson News | () Manhattan Mercury |
| () Wichita Eagle | () Iola Register | () Olathe Daily News |
| () Kansas City Star | () Johnson County Sun | () Ottawa Herald |
| () Chanute Tribune | () Junction City Daily Union | () Parsons Sun |
| () Dodge City Daily Globe | () Kansas City Kansan | () Pittsburg Morning Sun |
| () Emporia Gazette | () Lawrence Journal World | () Salina Journal |
| () Garden City Telegram | () Leavenworth Times | () Winfield Daily Courier |

Professor's link to Ma Bell raises eyebrows

BY CAROL CRUPPER

Harris News Service

TOPEKA - As Kansas State University professor Dennis Weisman testified this week for a bill easing regulations on Southwestern Bell, Sen. Jim Barone thought Weisman looked familiar.

Weisman told the Senate Commerce Committee that allowing Bell to escape some regulation in exchange for a commitment to spread high-speed Internet statewide would serve consumers well.

"The benefits of broadband are significant and the risks minimal," he said.

What Weisman didn't reveal to the Senate Commerce Committee was his link to the telecommunications giant.

As Barone, D-Frontenac, listened, he realized why the professor looked familiar.

What followed was what Barone terms "a sort of a 'Perry Mason' moment."

Responding to Barone's questions, Weisman said that not only had he been a marketing director for Southwestern Bell, but he still did consulting for the company.

Barone, a retired Southwestern Bell executive, said it suddenly struck him that he had worked with Weisman more than a decade ago.

"He has less hair and is a little grayer," Barone said.

No one would have been wiser had it not been for Barone. The agenda simply listed Weisman as a K-State economics professor.

"I got lucky because I recognized him," Barone said.

The incident has raised eyebrows at the Statehouse about academic experts who offer advice to state policy-makers.

Sen. Steve Morris, R-Hugoton, said it would be nice to know when professors have vested interests.

"We don't always know," he said.

Carol Williams, executive director of the Kansas Governmental Ethics Commission, said law doesn't require state employees to divulge that information.

"It's one of those things that falls through the cracks," she said.

No compensation from Bell

Weisman said that although Bell sought and coordinated his testimony it didn't compensate him.

"I came on my own time and my own money," he said.

Weisman, an expert on regulation, hasn't been a Bell employee since 1993.

"I thought my role was to speak for the implications of the act," Weisman said.

The professor said he has published more than 60 articles, some critical of Bell. He has written books and served on editorial boards of scholarly journals.

"You don't get there by being an advocate for one company," he said.

Weisman noted that no one else who testified talked about past jobs.

"I didn't believe it was relevant," he said.

More questions next time

Commerce Chairman Karin Brownlee, R-Olathe, thought she'd been listening to an objective economist.

But after Barone's questions, she said, "It cast a whole new light on his message."

Weisman said he'd sent a copy of his testimony, including his resumé, to Southwestern Bell. He thought they would forward that information to Brownlee's office to be included in the official record.

By Friday, Brownlee's office hadn't received it. A spokeswoman at Southwestern Bell said she didn't know what had happened.

"Certainly Southwestern Bell has a great deal of passion for SB 606," Brownlee said. "In their zeal, they maybe didn't realize that rather than add credibility to their efforts, this detracts from it."

6-2 9

DENNIS MCKINNEY
 REPRESENTATIVE 108TH DISTRICT
 612 S SPRUCE
 GREENSBURG, KS 67054
 (316) 723-2129



ASSISTANT MINORITY LEADER
 COMMITTEE ASSIGNMENTS
 MEMBER: TRANSPORTATION
 ENVIRONMENT
 INTERSTATE COOPERATION
 CALENDAR AND PRINTING

STATE CAPITOL, ROOM 327-S
 TOPEKA, KS 66612-1504
 (785) 296-7658

TOPEKA

HOUSE OF
 REPRESENTATIVES

March 20, 2002

Testimony on House Bill 3013

Thank you for the opportunity to testify today on House Bill 3013.

An article in the November, 2001 Progressive Farmer magazine poses the question, "Are universities for sale?" The article highlights the potential conflict between the need to raise private money for research and consulting services and the public interest.

First, I want to assert that HB3013 does not aim to reduce research or consulting or attack university faculty in any way. I fully agree that interaction between university faculty and business enhances the teaching and research missions of the universities and colleges in Kansas.

Rather, 3013 seeks to address potential conflicts with the public interest by applying the same standards to university personnel that we apply to ourselves. That is, we understand that there will be campaign contributions, therefore, we require public disclosure. We know that private financial interests will affect our views, therefore, we require an annual filing of a statement of substantial interest.

This proposal just requires disclosure of outside consulting. That allows public scrutiny of the recommendations or other work by the faculty member in light of outside interests. Outside consulting work is not discouraged. Information provided to the public is enhanced.

You may also want to ask if some research contracts do not fit under the definition of consultant. If so, the bill's disclosure application may need to be broadened.

Supervisors at universities are already required to file statements of substantial interests. However, because they are busy in administrative roles they are less likely to have outside contracts. But the same principle applies. Disclosure allows greater public scrutiny and, in the long run, enhances trust of the university.

Thank you.

Senate Utilities Committee
 March 21, 2002
 Attachment 7-1

Universities

A lack of government funds for ag research has led land-grants to make deals with private companies. Is the public research system compromised?

BY JIM PATRICO

You might as well hang a "For Sale" sign on the front doors of land-grant universities. So say critics who charge that in a rush for research dollars, public institutions are making too many deals with agribusinesses. The results, these critics say, are that professors have become profit centers, private companies often are setting the research agendas for universities, and supposedly unbiased research is bought and paid for by the companies that sponsor it.

"At land-grant universities today, the guy who puts up the loot is the guy who benefits . . . and that's not always farmers and ranchers," says Fred Stokes, president of the Organization for Competitive Markets, an advocacy group for family farms.

Stokes and others say land-grants take too much research money from chemical, pharmaceutical and seed companies. Sponsors then use the research to develop expensive private-label products, which farmers feel compelled to buy to remain competitive.

"I believe this violates the mission of our land-grant institutions, promotes concentration of agriculture and contributes to the demise of the family farm," says Stokes.

That is quite a load to lay on the academic world. After all, public colleges and private industry have long been research and funding partners. And those partnerships have led to many of the advances that fueled the Green Revolution and shaped the way we farm.

But that relationship has gotten out of

whack in recent years, critics say. They cite the following evidence:

- In 1998, the University of California-Berkeley signed an agreement with Novartis that gave the university access to some of the company's proprietary technology. Novartis also gave \$25 million over five years for research in the Department of Plant and Microbial Biology. In return, the company will receive first rights to license up to 33% of the patents that result from work using those funds. The deal also grants Novartis (now Syngenta) two of five seats on the department's research committee, which determines how the \$25 million is spent.

The arrangement didn't sit well with some UC-Berkeley faculty members. As Ignacio Chapela, a UC professor of microbial ecology, told *Atlantic Monthly* magazine, "This deal institutionalizes the university's relationship with one company, whose interest is profit. Our role should be to serve the public good."

- Land-grant researchers increasingly find themselves shut out of the scientific process by patents owned by industry. For instance, William Folk, a professor of biochemistry at the University of Missouri, recently found that he could not obtain licenses to use certain plant-transformation techniques developed by industry. He wanted to use the techniques to improve plant nutritional quality.

First planted in 1888, Sanborn Field at the University of Missouri is symbolic of ag research at land-grants. PHOTOS: JIM PATRICO



FOR

Date: WEDNESDAY 11-28-01

- | | | |
|----------------------------|----------------------------|----------------------------|
| () Topeka Capital Journal | () Hays Daily News | () Manhattan Mercury |
| () Wichita Eagle | () Hutchinson News | () Olathe Daily News |
| () Kansas City Star | () Iola Register | () Parsons Sun |
| () Chanute Tribune | () Johnson County Sun | () Pittsburg Morning Sun |
| () Dodge City Daily Globe | () Kansas City Kansan | () Salina Journal |
| () Emporia Gazette | () Lawrence Journal World | () Winfield Daily Courier |
| () Garden City Telegram | () Leavenworth Times | |

Opinion

Seeds of doubt

Knowing where experts' money comes from helps us better evaluate their advice

One of the oldest pieces of advice in unraveling political alliances is follow the money.

Money is a reliable indicator of motive. When companies spend money on lobbyists and experts, they don't spend it casually.

So when Sen. Dennis McKinney, D-Greensburg, says he thinks university professors should be required to disclose consulting fees they receive, he has a good point.

Some members of the academic community sound wounded by his suggestion.

"If we are scientists, our goal is to educate the public," says Ted Schroeder, an agricultural economist. "It has nothing to do with who we are consulting with."

Right. And politicians tell us they make decisions based on what's best for their constituents, not on who gave them how much money.

We would hope scientists wouldn't adjust their opinion according to who is paying them money. But they are as human as the rest of us, which means they will be tempted to avoid offending

the people writing them the checks.

Science strives to be unequivocal, cut-and-dried, black-and-white. It rarely is. Does anyone really wonder why the only scientists who believe cell phones cause brain cancer are ones who don't work for cell phone manufacturers? You wouldn't expect it to be the other way around, would you?

Some environmentalists have been so bold as to suggest that herbicide and pesticide manufacturers aren't entirely candid about the risks of using their products. They've even suggested that land grant schools have been too reluctant to challenge the chemical companies, fearing it might jeopardize the money they get from these sources.

It's safe to say that most scientists offer their honest view, regardless of who helps pay their salary. But the public would be better served if it had access to that information.

Disclosing it wouldn't compromise their integrity. It would only enhance it.

— Duane Schrag

Date: Tuesday 11-27-01

- | | | |
|----------------------------|----------------------------|----------------------------|
| () Topeka Capital Journal | () Hays Daily News | () Manhattan Mercury |
| () Wichita Eagle | () Hutchinson News | () Olathe Daily News |
| () Kansas City Star | () Iola Register | () Parsons Sun |
| () Chanute Tribune | () Johnson County Sun | () Pittsburg Morning Sun |
| () Dodge City Daily Globe | () Kansas City Kansan | (●) Salina Journal |
| () Emporia Gazette | () Lawrence Journal World | () Winfield Daily Courier |
| () Garden City Telegram | () Leavenworth Times | |

OPINION

Without disclosure, questions

THE ISSUE

University consultants

THE ARGUMENT

Contracts must be made public

Rep. Dennis McKinney has a gripe with the Kansas State University Extension Service.

And we can't say we blame him. The Greensburg Democrat says K-State professors who provide advice on cattle and grain operations for Kansas farmers and ranchers also perform consulting work with large ag-related corporations. Plus, he says, big companies provide an expanding share of research funding for the university.

McKinney says that means Kansas producers may be getting biased advice from those who also depend on large corporations for a paycheck. His concerns were outlined in a story published Sunday in the Journal.

McKinney is correct in raising this issue. The potential for conflict of interest in these cases is high and the Kansas Legislature should do something about it.

The solution does not rest with forcing K-State faculty to discontinue consulting work for large corporations. This is an important function for both the university and pri-

vate industry. Academics need contact with the corporate arena to stay abreast of "real world" conditions. And corporations need the focus, specialized knowledge and research found among K-State staff and faculty.

A better solution is for the Legislature to require professors and staff to report consultant work they perform outside the state's public universities, in much the same way lawmakers are required to file statements of substantial interest with the secretary of state. The statements list business ownerships, consulting fees, commissions and other financial interests.

Currently, faculty members who perform consulting services must obtain approval of their department head and dean. The activities are recorded in personnel files, but the information is not public record.

Requiring full disclosure of consultant work would help Kansas farmers and ranchers understand any potential bias that may exist when they seek advice from the K-State faculty through the Extension Service.

But this issue involves more than ag-related consulting. Full disclosure legislation should include all faculty, staff and administrators at any state university and college. Kansas taxpayers deserve to know how publicly supported assets, such as university buildings, labs, offices and administrative services, are being used to augment outside income for these public employees.

— Tom Bell
Editor & Publisher

Date: Saturday 11-24-01

- | | | |
|----------------------------|----------------------------|----------------------------|
| () Topeka Capital Journal | () Hays Daily News | () Manhattan Mercury |
| () Wichita Eagle | () Hutchinson News | () Olathe Daily News |
| () Kansas City Star | () Iola Register | () Parsons Sun |
| () Chanute Tribune | () Johnson County Sun | () Pittsburg Morning Sun |
| () Dodge City Daily Globe | () Kansas City Kansan | () Salina Journal |
| () Emporia Gazette | () Lawrence Journal World | () Winfield Daily Courier |
| () Garden City Telegram | () Leavenworth Times | |

Our View

Voluntary disclosure

A Kansas lawmaker's suggestion that public university professors disclose who hires them as consultants is a good one, but it need not be legislated.

Rep. Dennis McKinney, D-Greensburg, says producers should have the right to know when university agriculture faculty hire out as paid consultants to private industry.

McKinney, a cattle and grain farmer, says he relies on Kansas State University Extension officials for advice, as do many other Kansas farmers. McKinney questions the objectivity of information supplied by K-State experts given that many are hired by agriculture-based businesses for consultation.

McKinney would like to see professors receiving consultation money from large ag-based corporations disclose those relationships to the public. Supporters say it's a good idea. Opponents say the professors are in the education business and their objective in accepting consulting jobs is to be, well, objective.

There's nothing to suggest those in academia are not true to themselves in that regard. And disclosing which organizations are soliciting advice from which professors does not suggest bias on the part of the educator.

Moreover, such disclosure would practically ensure professors would be true to their cause to consult, rather than promote, the goods and services of a company.

Currently, professors on the payrolls of private business must report such activity to their deans for approval. The information is in the professor's personnel file, which is, as it should be, a confidential file.

McKinney isn't seeking a revolutionary change or one that would cause to alter the relationship professors have with outside business.

But mandating disclosure would not be in the spirit of the consulting business. Rather, school officials should encourage voluntary disclosure, and professors should be willing to provide it.

7-5 a

Date: 527 3-2-02

() Topeka Capital Journal
 () Wichita Eagle
 () Kansas City Star
 () Chanute Tribune
 () Dodge City Daily Globe
 () Emporia Gazette
 () Garden City Telegram

() Hutchinson News
 () Iola Register
 () Johnson County Sun
 () Junction City Daily Union
 () Kansas City Kansan
 () Lawrence Journal World
 () Leavenworth Times

() Manhattan Mercury
 () Olathe Daily News
 () Ottawa Herald
 () Parsons Sun
 () Pittsburg Morning Sun
 () Salina Journal
 () Winfield Daily Courier

Professor's link to Ma Bell raises eyebrows

By CAROL CRUPPER

Harris News Service

TOPEKA - As Kansas State University professor Dennis Weisman testified this week for a bill easing regulations on Southwestern Bell, Sen. Jim Barone thought Weisman looked familiar.

Weisman told the Senate Commerce Committee that allowing Bell to escape some regulation in exchange for a commitment to spread high-speed Internet statewide would serve consumers well.

"The benefits of broadband are significant and the risks minimal," he said.

What Weisman didn't reveal to the Senate Commerce Committee was his link to the telecommunications giant.

As Barone, D-Frontenac, listened, he realized why the professor looked familiar.

What followed was what Barone terms "a sort of a 'Perry Mason' moment."

Responding to Barone's questions, Weisman said that not only had he been a marketing director for Southwestern Bell, but he still did consulting for the company.

Barone, a retired Southwestern Bell executive, said it suddenly struck him that he had worked with Weisman more than a decade ago.

"He has less hair and is a little grayer," Barone said.

No one would have been wiser had it not been for Barone. The agenda simply listed Weisman as a K-State economics professor.

"I got lucky because I recognized him," Barone said.

The incident has raised eyebrows at the Statehouse about academic experts who offer advice to state policy-makers.

Sen. Steve Morris, R-Hugoton, said it would be nice to know when professors have vested interests.

"We don't always know," he said.

Carol Williams, executive director of the Kansas Governmental Ethics Commission, said law doesn't require state employees to divulge that information.

"It's one of those things that falls through the cracks," she said.

No compensation from Bell

Weisman said that although Bell sought and coordinated his testimony it didn't compensate him.

"I came on my own time and my own money," he said.

Weisman, an expert on regulation, hasn't been a Bell employee since 1993.

"I thought my role was to speak for the implications of the act," Weisman said.

The professor said he has published more than 60 articles, some critical of Bell. He has written books and served on editorial boards of scholarly journals.

"You don't get there by being an advocate for one company," he said.

Weisman noted that no one else who testified talked about past jobs.

"I didn't believe it was relevant," he said.

More questions next time

Commerce Chairman Karin Brownlee, R-Olathe, thought she'd been listening to an objective economist.

But after Barone's questions, she said, "It cast a whole new light on his message."

Weisman said he'd sent a copy of his testimony, including his resumé, to Southwestern Bell. He thought they would forward that information to Brownlee's office to be included in the official record.

By Friday, Brownlee's office hadn't received it. A spokeswoman at Southwestern Bell said she didn't know what had happened.

"Certainly Southwestern Bell has a great deal of passion for SB 606," Brownlee said. "In their zeal, they maybe didn't realize that rather than add credibility to their efforts, this detracts from it."

7-6 92

PROPOSED AMENDMENT TO HOUSE BILL NO. 2959

New Section 1. (a) On and after January 1, 2003, no faculty member or other employee of a state educational institution in the unclassified service under the Kansas civil services act, and amendments thereto, shall serve as a consultant or perform consulting services, either individually or as part of a business, unless such person has filed a disclosure statement as required by this section. The disclosure statement shall contain the following information:

- (1) The names of the contracting parties;
- (2) whether or not the faculty member has a substantial interest in the consulting business;
- (3) the date that the contract was approved by the institution as determined by the board of regents;
- (4) the amount of the consideration of the contract;
- (5) a summary of the basic terms of the contract; and
- (6) any other information required by rules and regulations promulgated by the board of regents.

The information required by paragraphs (1) through (5) shall be disclosed pursuant to any request therefor made under the open records act.

(b) The disclosure statement required by this section, and amendments thereto, shall be filed with the secretary of state and the local information officer of the state educational institution and such other locations as designated by the board of regents by rule and regulation no later than 10 business days after the contract has been signed by both parties. Each disclosure statement, and amendments thereto, required by this section shall be available for public inspection, under the provisions of the open records act, during the normal business hours of any office in which it is filed. Disclosure statements required under this section shall be maintained for a period of five years after the faculty member or unclassified employee of a

state educational institution ceases to be employed by such state educational institution.

(c) A separate disclosure statement, or amendment of an existing disclosure statement, shall be filed for each consulting business owned, operated or maintained by such faculty member or other unclassified employee in the unclassified service under the Kansas civil service act, and amendments thereto, of a state educational institution.

(d) No contract may be divided for the purpose of evading the requirements of this section. All contracts between the same parties during a calendar year shall be treated cumulatively as one contract for the purposes of this section.

New Sec. 2. The statement required by section 1, and amendments thereto, shall be signed and dated by the individual making the statement and shall contain substantially the following:

STATEMENT OF CONSULTING INTERESTS

(name)

(office or position of employment for which this statement is filed)

(address) (body of statement, including the information prescribed by section 1 in form prescribed by Kansas board of regents)

"I declare that this statement of substantial interests (including any accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief is a true, correct and complete statement of all of my consulting interests and other matters required by law. I understand that intentional failure to file this statement as required by law or intentionally filing a false statement is a class B misdemeanor."

(date of filing)

(signature of person making the statement)

New Sec. 3. As used in this act: (a) "Board of regents shall have the meaning ascribed to it in K.S.A. 76-711, and amendments

thereto.

(b) "Business" shall have the meaning ascribed to it in K.S.A. 46-230 and amendments thereto.

(c) "Consultant" shall have the meaning ascribed to it in K.S.A. 46-284 and amendments thereto. Consultant also includes any corporation, partnership or other business entity in which the individual has a substantial interest.

(d) "Contract" shall have the meaning ascribed to it in K.S.A. 46-231 and amendments thereto.

(e) "Person" shall have the meaning ascribed to it in K.S.A. 46-223 and amendments thereto.

(f) "State educational institution" shall have the meaning ascribed to it in K.S.A. 76-711, and amendments thereto.

(g) "Substantial interest" shall have the meaning ascribed to it in K.S.A. 46-229 and amendments thereto.

New Sec. 4. This act shall not apply to any faculty member or other employee of a state educational institution in the unclassified service under the Kansas civil service act, and amendments thereto:

(a) Who serves in an adjunct faculty position which is a part-time position which is equivalent to 25% or less of a full-time position;

(b) whose consulting contract has an annual value of \$500 or less;

(c) who is an attorney if disclosure would require revealing the identity of a client or otherwise violate the lawyer-client privilege set forth in K.S.A. 60-426, and amendments thereto; or

(d) who is a physician if disclosure would require revealing the identity of a patient or otherwise violate the physician-patient privilege set forth in K.S.A. 60-427, and amendments thereto.

New Sec. 5. (a) Failure to file any statement as required by this act or intentionally filing a false statement is a class B misdemeanor.

(b) Failure to provide access to or a copy of a disclosure statement as required by this act shall be deemed to be a violation of the open records act and shall be subject to the provisions of K.S.A. 45-222 and 45-223 and amendments thereto.

New Sec. 6. The Kansas board of regents shall adopt rules and regulations necessary to implement this act on or before January 1, 2003.

New Sec. 7. Sections 1 through 7, and amendments thereto, shall be known and may be cited as the university consulting contract sunshine act.

1 (44) The amount of franchise tax paid to the secretary of state by
2 domestic corporations, foreign corporations, domestic limited liability
3 companies, foreign limited liability companies, domestic limited partner-
4 ship, foreign limited partnership, domestic limited liability partnerships
5 and foreign limited liability partnerships.

6 (45) *Records the disclosure of which may jeopardize the security of*
7 *systems, facilities or equipment used in the production, transmission or*
8 *distribution of energy¹ or communications services.*

9 (b) Except to the extent disclosure is otherwise required by law or as
10 appropriate during the course of an administrative proceeding or on ap-
11 peal from agency action, a public agency or officer shall not disclose fi-
12 nancial information of a taxpayer which may be required or requested by
13 a county appraiser or the director of property valuation to assist in the
14 determination of the value of the taxpayer's property for ad valorem tax-
15 ation purposes; or any financial information of a personal nature required
16 or requested by a public agency or officer, including a name, job descrip-
17 tion or title revealing the salary or other compensation of officers, em-
18 ployees or applicants for employment with a firm, corporation or agency,
19 except a public agency. Nothing contained herein shall be construed to
20 prohibit the publication of statistics, so classified as to prevent identifi-
21 cation of particular reports or returns and the items thereof.

22 (c) As used in this section, the term "cited or identified" shall not
23 include a request to an employee of a public agency that a document be
24 prepared.

25 (d) If a public record contains material which is not subject to dis-
26 closure pursuant to this act, the public agency shall separate or delete
27 such material and make available to the requester that material in the
28 public record which is subject to disclosure pursuant to this act. If a public
29 record is not subject to disclosure because it pertains to an identifiable
30 individual, the public agency shall delete the identifying portions of the
31 record and make available to the requester any remaining portions which
32 are subject to disclosure pursuant to this act, unless the request is for a
33 record pertaining to a specific individual or to such a limited group of
34 individuals that the individuals' identities are reasonably ascertainable, the
35 public agency shall not be required to disclose those portions of the record
36 which pertain to such individual or individuals.

37 (e) The provisions of this section shall not be construed to exempt
38 from public disclosure statistical information not descriptive of any iden-
39 tifiable person.

40 (f) Notwithstanding the provisions of subsection (a), any public rec-
41 ord which has been in existence more than 70 years shall be open for
42 inspection by any person unless disclosure of the record is specifically
43 prohibited or restricted by federal law, state statute or rule of the Kansas

: (A)

, water

; or (B) sewer or wastewater treatment systems, facilities or equipment

1 (44) The amount of franchise tax paid to the secretary of state by
2 domestic corporations, foreign corporations, domestic limited liability
3 companies, foreign limited liability companies, domestic limited partner-
4 ship, foreign limited partnership, domestic limited liability partnerships
5 and foreign limited liability partnerships.

6 (45) ~~Records the disclosure of which may jeopardize the security of~~
7 ~~systems, facilities or equipment used in the production, transmission or~~
8 ~~distribution of energy or communications services.~~

would pose a substantial likelihood of
revealing security measures that protect

9 (b) Except to the extent disclosure is otherwise required by law or as
10 appropriate during the course of an administrative proceeding or on ap-
11 peal from agency action, a public agency or officer shall not disclose fi-
12 nancial information of a taxpayer which may be required or requested by
13 a county appraiser or the director of property valuation to assist in the
14 determination of the value of the taxpayer's property for ad valorem tax-
15 ation purposes; or any financial information of a personal nature required
16 or requested by a public agency or officer, including a name, job descrip-
17 tion or title revealing the salary or other compensation of officers, em-
18 ployees or applicants for employment with a firm, corporation or agency,
19 except a public agency. Nothing contained herein shall be construed to
20 prohibit the publication of statistics, so classified as to prevent identifi-
21 cation of particular reports or returns and the items thereof.

For purposes of this paragraph, security
means measures that protect against criminal
acts intended to intimidate or coerce the
civilian population, influence government
policy by intimidation or coercion or to
affect the operation of government by
disruption of public services, mass
destruction, assassination or kidnapping.

22 (c) As used in this section, the term "cited or identified" shall not
23 include a request to an employee of a public agency that a document be
24 prepared.

25 (d) If a public record contains material which is not subject to dis-
26 closure pursuant to this act, the public agency shall separate or delete
27 such material and make available to the requester that material in the
28 public record which is subject to disclosure pursuant to this act. If a public
29 record is not subject to disclosure because it pertains to an identifiable
30 individual, the public agency shall delete the identifying portions of the
31 record and make available to the requester any remaining portions which
32 are subject to disclosure pursuant to this act, unless the request is for a
33 record pertaining to a specific individual or to such a limited group of
34 individuals that the individuals' identities are reasonably ascertainable, the
35 public agency shall not be required to disclose those portions of the record
36 which pertain to such individual or individuals.

37 (e) The provisions of this section shall not be construed to exempt
38 from public disclosure statistical information not descriptive of any iden-
39 tifiable person.

40 (f) Notwithstanding the provisions of subsection (a), any public rec-
41 ord which has been in existence more than 70 years shall be open for
42 inspection by any person unless disclosure of the record is specifically
43 prohibited or restricted by federal law, state statute or rule of the Kansas