

MINUTES OF THE SENATE EDUCATION COMMITTEE.

The meeting was called to order by Chairperson Senator Dwayne Umbarger at 1:10 p.m. on March 18, 2003 in Room 123-S of the Capitol.

All members were present except:

Committee staff present: Carolyn Rampey, Legislative Research
Kathie Sparks, Legislative Research
Theresa Kiernan, Revisor of Statutes
Judy Steinlicht, Secretary

Conferees appearing before the committee: Theresa Kieran, Revisor of Statutes
Bruce Wyatt, State Board of Education
Mark Desetti, KNEA

Others attending: See Attached List

SB190–State Board of Education; non partisan election

Chairman Umbarger stated that he had talked to many of the Committee members to determine their interests on changes for the State Board of Education. It was his understanding that the members were very interested in **SB190** as it relates to a non-partisan election. The spring election in **SB190** did not receive much support.

Theresa Kiernan explained amendments to **SB190**. The amendment would change the election of the State Board of Education back to November in the odd numbered years, but retain the non-partisan election provision. It would retain the provision for filling vacancies by remaining members of the board. The amendments were discussed by the Committee. Chairman Umbarger held working the bill until later in today's meeting as two members needed to leave the meeting to report to another committee.
(Attachment 1)

Proposed SCR 3rs0939–adds three appointed members to the State Board of Education and appointed and elected members would have four-year terms

Theresa explained amendments to **Proposed SCR 3rs0939**. The amendment would allow three members of the State Board of Education to be appointed by the Governor, subject to confirmation by the Senate. In discussion, Chairman Umbarger stated the reason for this change was the concern that the Governor needed a stronger voice in education. Approximately 52% to 55% of the state general fund is spent on education. Other state departments have a secretary appointed by the Governor. The Governor does not have a voice in education. (Attachment 2)

Bruce Wyatt, State Board of Education offered comments that passage of any of the proposals will cause stress for the board. He feels the board will spend the next two years talking about the board instead of the education of the children. It is a critical time when the board has adopted a plan and set goals for the No Child Left Behind Act. Focus needs to be on education and Mr. Wyatt urges the board to not make any changes in the board that would detract from their work on education. Committee discussion followed.

Dr. Bill Wagon, State Board of Education member provided a document entitled “Strategic Goals 2001-02: Progress Report” which was distributed to each Committee member. He would like members to observe the continued school improvement effort made by the State Board of Education and future plans for the academic achievement of Kansas students.

Mark Desetti, KNEA addressed the proposals before the Committee regarding the changes in the State Department of Education. KNEA believes people desire a consistency in the state board. KNEA sees the

CONTINUATION SHEET

MINUTES OF THE SENATE EDUCATION COMMITTEE at 1:10 p.m. on March 18, 2003 in Room 123-S of the Capitol.

first issue as the number of board members, the second as that of election versus appointment and third the issue of membership to the board. **SCR1601** or **3rs0941** would provide an uneven number on the board. Mark does not believe the people would be willing to give up their vote in electing board members. He does believe that appointment of some members would raise the importance of education policy in the eyes of both the Governor and the Legislature. KNEA does not believe the provision in **SCR1611** for local boards to elect the state board is good policy. They also do not believe there would be a benefit to moving the election to the spring. KNEA would recommend passage of **HB2179** allowing school employees to serve on the State Board of Education. The bill passed in the House 112-8. The State Board of Education is the only regulatory board on which professionals in the field are not permitted to serve. (Attachment 3)

Information was distributed to Committee members in reference to **HB2179** regarding the debate yesterday on conflict of interest during the Committee meeting on March 17, 2003. (Attachment 4)

Senator Schodorf made a motion to amend **SB190** as drafted which would remove the provision to move the election to the spring. Seconded by Senator Downey. Motion carried.

Senator Schodorf made a motion to amend **SB190** as amended into **HB2179**. Seconded by Senator Oleen. Motion carried with one no vote by Senator Bunten.

Final action on **HB2179** will be held until next week.

Proposed Senate Concurrent Resolution 3rs0939—adds three appointed members to the State Board of Education and appointed and elected members would serve a four year-terms

Senator Teichman made a motion to amend **Proposed Senate Concurrent Resolution 3rs0939** to allow the Governor to appoint one member instead of three to the State Board of Education. Seconded by Senator Schodorf.

Senator Downey made a substitute motion on **Proposed Senate Concurrent Resolution 3rs0939** to allow the Governor to appoint up to three members to the State Board of Education. Seconded by Senator Hensley. After discussion, the substitute motion and the second were withdrawn.

A vote was taken on the original motion by Senator Teichman. Motion failed.

Senator Oleen made a motion to replace the contents of **SCR1611** with the contents of **Proposed Senate Concurrent Resolution 3rs0939**. After discussion, Senator Oleen withdrew and replaced the original motion with a motion to bring forth **Proposed Senate Concurrent Resolution 3rs0939** to receive a number. Seconded by Senator Teichman. Motion carried with 3 no votes by Senators Emler, Bunten and Corbin.

Senator Schodorf made a motion to approve the minutes of March 10, 2003. Seconded by Senator Emler. Motion carried.

Meeting adjourned at 2:30 p.m. The next meeting is scheduled for March 19, 2003 at 1:30 p.m. in Room 123S.

SENATE BILL No. 190

By Committee on Education

2-10

9 AN ACT concerning the state board of education; relating to the mem-
10 bers thereof; amending K.S.A. 25-101, 25-202, 25-1903, 25-1906, 25-
11 3903, 25-3905, 25-3906 and 72-7504 and repealing the existing sec-
12 tions; also repealing K.S.A. 25-3902a and 25-3904a.

13
14 *Be it enacted by the Legislature of the State of Kansas:*

15 New Section 1. (a) Elections of members to the state board of ed-
16 ucation shall be nonpartisan. Laws applicable only to partisan elections
17 shall not apply to elections of members to the state board of education.
18 All laws applicable to elections, the violation of which is a crime, shall be
19 applicable to elections of members to the state board of education.

20 (b) Except as provided in subsection (a), laws applicable to elections
21 of state officers shall apply to elections of members to the state board of
22 education to the extent that the same are not in conflict with the provi-
23 sions of this act.

24 ~~New Sec. 2. (a) "General election" means the election held on the
25 first Tuesday in April in any odd-numbered year.~~

26 ~~(b) "Primary election" means the election held five weeks preceding
27 the election on the first Tuesday in April, and any other preliminary elec-
28 tion at which part of the candidates for special election to the state board
29 of education are eliminated by the process of the election but at which
30 no officer is finally elected.~~

31 ~~(c) "Filing deadline" means 12:00 o'clock noon on the Tuesday which
32 precedes by 10 weeks the first Tuesday in April of any odd-numbered
33 year.~~

34 New Sec. 3. (a) No primary election of members of the state board
35 of education shall be held unless by holding such primary one or more
36 persons will be eliminated as candidates for office. In the event there are
37 not more than two candidates for any one office, the names of the candi-
38 dates for such office shall not appear on the primary election ballots,
39 and there shall be no primary election for such office, but the names of
40 such candidates shall be placed on the general election ballot.

41 (b) The names of the two candidates receiving the greatest number
42 of votes for any board member position at the primary election shall
43 appear on the ballots in the general election.

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1 (c) No ballot in a primary election shall have names for any board
2 member position unless more than two candidates have filed for such
3 position.

4 (d) On the ballots in general elections, blank lines for the name of
5 write-in candidates shall be printed at the end of the list of candidates
6 for office. The purpose of such blank lines shall be to permit the voter to
7 insert the name of any person not printed on the ballot for whom such
8 voter desires to vote for such office. No blank lines for write-in candidates
9 shall appear on primary election ballots.

10 (e) Names of candidates appearing on the ballots in primary and gen-
11 eral elections of members to the state board of education shall be listed
12 in the various possible orders in rotation.

13 New Sec. 4. The members of the state board of education shall fill
14 by appointment any vacancy which occurs on the board. When a vacancy
15 occurs, the board shall publish a notice one time in the Kansas register
16 stating that the vacancy has occurred and that it will be filled by appoint-
17 ment by the board not sooner than 15 days after such publication. If the
18 vacancy occurs on or after May 1 of the second year of the term, the
19 person so appointed shall serve for the remainder of the unexpired term
20 and until a successor is elected and qualifies. If the vacancy occurs before
21 May 1 of the second year of the term, the person appointed to fill the
22 vacancy shall serve until a successor is elected and qualifies at the next
23 general election to serve the remainder of the unexpired term. The elec-
24 tion of such successor shall be in the same manner as election of a mem-
25 ber of the board for a regular term.

26 At such election, the ballots or ballot labels and returns of election with
27 respect to such office shall be designated as follows: "To fill the unexpired
28 term."

29 Sec. 5. K.S.A. 25-101 is hereby amended to read as follows: 25-101.
30 On the Tuesday succeeding the first Monday in November of each even-
31 numbered year, there shall be held a general election to elect officers as
32 follows:

33 At each alternate election, prior to the year in which the term of office
34 of the president and vice-president of the United States will expire, there
35 shall be elected the electors of president and vice-president of the United
36 States to which the state may be entitled at the time of such election;

37 at each such election, when the term of a United States senator for this
38 state shall expire during the next year, there shall be elected a United
39 States senator;

40 at each such election there shall be elected the representatives in con-
41 gress to which the state may be entitled at the time of such election;

42 at each alternate election, prior to the year in which their regular terms
43 of office will expire, there shall be elected a governor, lieutenant gover-

1 nor, secretary of state, attorney general, state treasurer and state com-
 2 missioner of insurance;

3 ~~at each such election there shall be elected such members of the state~~
 4 ~~board of education as provided by law;~~

5 at each such election, when, in a judicial district in which judges of the
 6 district court are elected, the term of any district judge expires during
 7 the next year, or a vacancy in a district judgeship has been filled by ap-
 8 pointment more than 30 days prior to the election, there shall be elected
 9 a district judge of such judicial district;

10 at each such election, when, in a judicial district in which judges of the
 11 district court are elected, the term of any district magistrate judge expires
 12 during the next year, or a vacancy in a district magistrate judgeship has
 13 been filled by appointment more than 30 days prior to the election, there
 14 shall be elected a district magistrate judge of such judicial district;

15 at each alternate election, prior to the year in which the regular term
 16 of office of state senators shall expire, there shall be elected a state senator
 17 in each state senatorial district;

18 at each election there shall be elected a representative from each state
 19 representative district;

20 at each alternate election there shall be elected, in each county, a
 21 county clerk, county treasurer, register of deeds, county or district attor-
 22 ney, sheriff and such other officers as provided by law; and

23 ~~at each alternate election, in counties that may by law be entitled to~~
 24 ~~elect such officer, there shall be elected a county surveyor;~~

25 at each election, when the term of county commissioner in any district
 26 in any county shall expire during the next year, there shall be elected from
 27 such district a county commissioner.

28 This section shall apply to the filling of vacancies only so far as is con-
 29 sistent with the provisions of law relating thereto.

30 Sec. 6. K.S.A. 25-202 is hereby amended to read as follows: 25-202.

31 (a) Except as otherwise provided ~~in subsection (b) by this section~~, all
 32 candidates for national, state, county and township offices shall be nom-
 33 inated by: (1) A primary election held in accordance with article 2 of
 34 chapter 25 of the Kansas Statutes Annotated and amendments thereto;
 35 or (2) independent nomination petitions signed and filed as provided by
 36 existing statutes.

37 (b) Candidates for any of such offices who are members of any po-
 38 litical party whose candidate for governor did not poll at least 5% of the
 39 total vote cast for all candidates for governor in the preceding general
 40 election shall not be entitled to nomination by primary election but shall
 41 be nominated by a delegate or mass convention according to article 3 of
 42 chapter 25 of the Kansas Statutes Annotated and amendments thereto.

43 (c) No candidate for any national, state, county or township office

at each such election there shall be elected such members
 of the state board of education as provided by law;

1 shall file for office as a partisan candidate in a primary election and also
 2 file for office as an independent candidate for any national, state, county
 3 or township office in the general election immediately following.

4 (d) The provisions of article 2 of chapter 25 of the Kansas Statutes
 5 Annotated and amendments thereto shall not apply to the justices of the
 6 supreme court or to judges of the district court in judicial districts which
 7 have approved the proposition of nonpartisan selection of district court
 8 judges, as provided in K.S.A. 20-2901 and amendments thereto, nor to
 9 special elections to fill vacancies.

10 (e) *The provisions of law relating to partisan primary elections shall*
 11 *not apply to the election of members of the state board of education.*

12 Sec. 7. K.S.A. 25-1903 is hereby amended to read as follows: 25-
 13 1903. ~~(a)~~ A person may become a candidate for election to the office of
 14 state board member by either one of the methods provided in this section:

15 ~~(1):~~

16 (a) Any person who is an elector of any board member district may
 17 petition to be a candidate for member of the state board from the board
 18 member district in which such person resides. Any such person shall file
 19 with the secretary of state a petition for the candidacy of such person
 20 signed by not less than 200 electors residing in such board member dis-
 21 trict. ~~(2)~~

22 (b) Any person who is an elector of any board member district may
 23 become a candidate for member of the state board from the board mem-
 24 ber district in which such candidate resides by filing in the office of the
 25 secretary of state a declaration of intent to be such a candidate and pay-
 26 ment of a filing fee in the amount of \$25.

27 ~~(b) Any such petition or declaration of intent filed by a candidate to~~
 28 ~~run in the primary election held in accordance with K.S.A. 25-203, and~~
 29 ~~amendments thereto, shall be filed no later than 12:00 noon, June 10,~~
 30 ~~prior to such primary election, or if such date falls on Saturday, Sunday~~
 31 ~~or a holiday, then before 12:00 noon of the next following day that is not~~
 32 ~~a Saturday, Sunday or a holiday. Any such petition or declaration of intent~~
 33 ~~filed by an independent candidate for the office of state board member~~
 34 ~~shall be filed no later than 12:00 noon on the Monday preceding the date~~
 35 ~~fixed for the holding of primary elections in accordance with K.S.A. 25-~~
 36 ~~203, and amendments thereto.~~

37 Sec. 8. K.S.A. 25-1906 is hereby amended to read as follows: 25-
 38 1906. (a) ~~Except as provided by this section,~~ the regular term of office of
 39 members of the state board shall be four ~~(4)~~ years. Regular terms shall
 40 commence on ~~the second Monday in January~~ May 1 following election
 41 of the state board member.

42 (b) ~~Of the members of the state board elected in the year 1968, five~~
 43 ~~(5) shall have terms ending on the second Monday in January in 1971,~~

(b) Any such petition or declaration of intent filed by a candidate to run in the primary election held in accordance with K.S.A. 25-203, and amendments thereto, shall be filed no later than 12:00 noon, June 10, prior to such primary election, or if such date falls on Saturday, Sunday or a holiday, then before 12:00 noon of the next following day that is not a Saturday, Sunday or a holiday. Any such petition or declaration of intent filed by an independent candidate for the office of state board member shall be filed no later than 12:00 noon on the Monday preceding the date fixed for the holding of primary elections in accordance with K.S.A. 25-203, and amendments thereto.

1 and five ~~(5)~~ shall have terms ending on the second Monday in January in
 2 1973. Members elected to board member positions 1, 3, 5, 7 and 9 shall
 3 have the shorter terms and members elected to board member positions
 4 2, 4, 6, 8 and 10 shall have the longer terms.

5 ~~(e) Any member elected subsequent to 1968 shall be elected for a~~
 6 ~~four-year term, unless such election is to fill the unexpired term where a~~
 7 ~~vacancy has occurred on the board, in which case the member shall be~~
 8 ~~elected for the two (2) years remaining of the unexpired term.~~

9 ~~(d) Members appointed to fill a vacancy in a board member position~~
 10 ~~shall serve from time of appointment until the second Monday in January~~
 11 ~~next following the election of a member to that board member position.~~

12 ~~(c) The terms of members of the state board elected in the year 2000~~
 13 ~~shall hold office until May 1, 2004, or as soon thereafter as a successor is~~
 14 ~~elected, or appointed and qualifies.~~

15 ~~The terms of members of the state board of education elected in the~~
 16 ~~year 2002 shall hold office until May 1, 2006, or as soon thereafter as a~~
 17 ~~successor is elected, or appointed and qualifies.~~

18 Sec. 9. K.S.A. 25-3903 is hereby amended to read as follows: 25-
 19 3903. Whenever a vacancy occurs in the office of state representative or
 20 state senator such vacancy shall be filled by appointment by the governor
 21 of the person elected to be so appointed by a district convention held as
 22 provided in K.S.A. 25-3902, *and amendments thereto*. Whenever a va-
 23 cancy occurs in the office of member of the state board of education,
 24 such vacancy shall be filled in the manner provided for in ~~K.S.A. 25-3902a~~
 25 *section 4, and amendments thereto*.

26 Sec. 10. K.S.A. 25-3905 is hereby amended to read as follows: 25-
 27 3905. (a) When a vacancy occurs after a primary election in a party candi-
 28 didacy, such vacancy shall be filled by the party committee of the con-
 29 gressional district, county or state, as the case may be, except if the
 30 vacancy is in a party candidacy for a district office ~~or for the office of~~
 31 ~~member of the state board of education~~, it shall be filled by district con-
 32 vention held as provided in K.S.A. 25-3904, and amendments thereto, ~~or~~
 33 ~~as provided in K.S.A. 25-3904a and amendments thereto~~, and except as
 34 otherwise provided in subsection ~~(e)~~ (d). Such convention shall be called
 35 within 10 days of receipt of the notice that the vacancy has occurred or
 36 will occur. If only one political party nominates a candidate at the primary
 37 election and thereafter a vacancy occurs in such party candidacy, any
 38 political party may fill such vacancy in the manner specified in this section.

39 (b) *When a vacancy in a candidacy for the office of member of the*
 40 *state board of education occurs after a primary election, such vacancy*
 41 *shall be filled by the members of the state board of education as provided*
 42 *by section 4, and amendments thereto.*

43 ~~(b)~~ (c) In addition to other vacancies in party candidacies to which

1 this section applies, this section ~~shall~~ also *shall* apply when a vacancy
2 occurs in an office, and it is provided by law that such vacancy shall be
3 filled by appointment until the next general election at which time a
4 person is to be elected to fill the unexpired term, or words of like effect,
5 and such vacancy occurs after the primary election.

6 ~~(e)~~ (d) When a vacancy occurs after a primary election in a party
7 candidacy for governor or lieutenant governor, a vacancy ~~shall thereby~~
8 also *shall* occur for the other of such two offices. Such vacancies shall be
9 filled by a state party delegate convention. The convention shall be called
10 by the state party chairperson. The delegates to the convention shall be
11 the state party committee members, and the officers of the convention
12 shall be the officers of the state party committee. At such convention the
13 vote to fill such vacancies shall be taken such that each convention vote
14 shall be for a candidate for governor and lieutenant governor running
15 together. If the initial vacancy that has occurred is for the office of lieu-
16 tenant governor, the person who is the candidate for governor of such
17 pair of candidates shall be the only governor candidate at such convention.

18 Sec. 11. K.S.A. 25-3906 is hereby amended to read as follows: 25-
19 3906. (a) When a vacancy in a party candidacy for any national, state,
20 district or county elective office occurs under the circumstances specified
21 in this section, such vacancy shall be filled by the party committee of the
22 congressional district, county or state, as the case may be, ~~except that~~. If
23 such vacancy is in a party candidacy for a district office ~~or for the office~~
24 ~~of member of the state board of education~~, it shall be filled by district
25 convention held as provided in K.S.A. 25-3904, and amendments thereto,
26 ~~or as provided in K.S.A. 25-3904a and amendments thereto~~, and except
27 as otherwise provided in ~~subsection (d) and (e) subsections (e) and (f)~~.
28 Such convention shall be called within 10 days of notice that a vacancy
29 has occurred or will occur.

30 (b) *When a vacancy in a candidacy for the office of state board of*
31 *education occurs during the time specified in subsection (c), such vacancy*
32 *shall be filled by the members of the state board of education as provided*
33 *by section 4, and amendments thereto.*

34 ~~(b)~~ (c) This section shall apply to any vacancy in a party candidacy
35 which occurs after the closing time for filing to be a candidate specified
36 in K.S.A. 25-205, and amendments thereto, and prior to or on the day of
37 the primary election, if such occurrence results in a political party not
38 having a primary candidate for such office.

39 ~~(e)~~ (d) This section shall apply when a vacancy occurs in an office,
0 and it is provided by law that such vacancy shall be filled by appointment
+1 until the next general election at which time a person is to be elected to
42 fill the unexpired term, or words of like effect, and such vacancy occurs
43 during the period specified in subsection ~~(b)~~ (c).

1 ~~(d)~~ (e) When a vacancy occurs during the period specified in subsec-
2 tion ~~(b)~~ (c) in a party candidacy for governor or lieutenant governor, and
3 the occurrence results in a political party not having a pair of primary
4 candidates for governor and lieutenant governor, a vacancy ~~shall thereby~~
5 also *shall* occur for the other of such two offices. Such vacancies shall be
6 filled by a state party delegate convention. The convention shall be called
7 by the state party chairperson. The delegates to the convention shall be
8 the state party committee members, and the officers of the convention
9 shall be the officers of the state party committee. At such convention the
10 vote to fill such vacancies shall be taken such that each convention vote
11 shall be for a candidate for governor and lieutenant governor running
12 together. If the initial vacancy that has occurred is for the office of lieu-
13 tenant governor, the person who is the candidate for governor of such
14 pair of candidates shall be the only governor candidate at such convention.

15 ~~(e)~~ (f) When there is more than one pair of candidates for governor
16 and lieutenant governor of the same party, and a vacancy occurs during
17 the period specified in subsection ~~(b)~~ (c) in a candidacy for lieutenant
18 governor of such party, and the occurrence results in a governor candidate
19 not having a lieutenant governor candidate, such vacancy shall be filled
20 by the candidate for governor of such pair of candidates designating a
21 candidate for lieutenant governor to be the running mate.

22 Sec. 12. K.S.A. 72-7504 is hereby amended to read as follows: 72-
23 7504. (a) Whenever a vacancy occurs in any board member position, such
24 vacancy shall be filled in the manner provided in ~~K.S.A. 25-3902a~~ section
25 4, and amendments thereto.

26 (b) A vacancy occurs in a board member position under any of the
27 following circumstances:

28 (1) Death of a board member, on the date of death.

29 (2) Removal of a board member, on the date the removal order is
30 final, or if appealed to the court, on the date the court action becomes
31 final.

32 (3) By written notice of resignation of a member filed with the state
33 board, on the date specified in the notice of resignation, which shall be
34 not later than 60 days after such notice of resignation is filed. The member
35 resigning from the board also shall send a copy of the notice of resignation
36 to the secretary of state.

37 (c) In the event that any board member changes residence outside
38 of the district from which elected, such member promptly shall resign
39 from the state board. If such a member fails to resign such member shall
40 be subject to removal from office as provided by law. Any redistricting of
41 board member districts which results in a board member residing outside
42 of the board member district shall not be grounds for removal and shall
43 not disqualify such member from service on the state board for the re-

1 mainder of the term for which the member was elected or appointed.
2 Sec. 13. K.S.A. 25-101, 25-202, 25-1903, 25-1906, 25-3902a, 25-
3 3903, 25-3904a, 25-3905, 25-3906 and 72-7504 are hereby repealed.
4 Sec. 14. This act shall take effect and be in force from and after its
5 publication in the statute book.

PROPOSED SENATE CONCURRENT RESOLUTION NO. _____

By

A PROPOSITION to amend sections 3 and 7 of article 6 of the constitution of the state of Kansas, relating to the state board of education.

Be it resolved by the Legislature of the State of Kansas, two-thirds of the members elected (or appointed) and qualified to the Senate and two-thirds of the members elected (or appointed) and qualified to the House of Representatives concurring therein:

Section 1. The following proposition to amend the constitution of the state of Kansas shall be submitted to the qualified electors of the state for their approval or rejection: Sections 3 and 7 of article 6 of the constitution of the state of Kansas are hereby amended to read as follows:

"§ 3. Members of state board of education and state board of regents. (a) (1) There shall be ten 13 members of the state board of education with overlapping terms as the legislature may prescribe.

(2) Three members of the state board of education shall be appointed by the governor, subject to confirmation by the senate. Such members shall have such qualifications as the legislature may prescribe.

(3) Ten members of the state board of education shall be elected. The legislature shall make provision for ten member districts, each comprised of four contiguous senatorial districts. The electors of each member district shall elect one person residing in the district as a member of the board.

(4) The legislature shall prescribe the manner in which vacancies occurring on the board shall be filled.

(b) The state board of regents shall have nine members with overlapping terms as the legislature may prescribe. Members shall be appointed by the governor, subject to confirmation by the senate. One member shall be appointed from each congressional district with the

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remaining members appointed at large, however, no two members shall reside in the same county at the time of their appointment. Vacancies occurring on the board shall be filled by appointment by the governor as provided by law.

(c) Subsequent redistricting shall not disqualify any member of either board from service for the remainder of his the term. Any member of either board may be removed from office for cause as may be provided by law.

§ 7. Savings clause. (a) All laws in force at the time of the adoption approval of this amendment and consistent therewith shall remain in full force and effect until amended or repealed by the legislature. All laws inconsistent with this amendment, unless sooner repealed or amended to conform with this amendment, shall remain in full force and effect until ~~July 1, 1969~~ July 1, 2005.

~~(b) Notwithstanding any other provision of the constitution to the contrary, no state superintendent of public instruction or county superintendent of public instruction shall be elected after January 1, 1967.~~

~~(c) The state perpetual school fund or any part thereof may be managed and invested as provided by law or all or any part thereof may be appropriated, both as to principal and income, to the support of the public schools supervised by the state board of education."~~

Sec. 2. The following statement shall be printed on the ballot with the amendment as a whole:

"Explanatory statement. The constitution of this state provides for a ten-member state board of education. Members are selected by election from prescribed member districts. The constitution further provides for selection of members of the state board of

regents by gubernatorial appointment."

"A vote for this proposition would provide for a thirteen-member state board of education. A vote for this proposition would provide for the election of 10 of the members of the board and the appointment, by the governor, of three members of the board."

"A vote against this proposition would continue in effect the requirement of a ten-member state board of education and that the members are selected by election."

Sec. 3. This resolution, if approved by two-thirds of the members elected (or appointed) and qualified to the Senate, and two-thirds of the members elected (or appointed) and qualified to the House of Representatives shall be entered on the journals, together with the yeas and nays. The secretary of state shall cause this resolution to be published as provided by law and shall cause the proposed amendment to be submitted to the electors of the state at the general election in the year 2004.



Mister Chairman, members of the Committee, thank you for the opportunity to speak to you today on the various proposals dealing with the State Board of Education. We would like to raise some issues for your consideration.

There are many people in Kansas who are frustrated with the recurring problem of a severe ideological split on the State Board of Education. A few years ago, the problems surfaced in the debate over science standards. Science teachers were thrown into a sort of “standards limbo” while the State Board fought its internal battles and the election sorted out the problem. Now we have returned to the internal battles and face the difficulty of waiting for another election season to determine the real direction of the Board.

What school people most desire in a State Board of Education is consistency. If we want to see our schools maintain their excellence and grow even better, then we need to know what the standards will be, what the testing regimen is, how we will be accredited, what courses to offer, and so on.

The first issue to address might be the number of board members. A major obstacle the board has had to face is how to deal with a five – five split. Both times the board has become ideologically split they have had to deal with tie votes and an inability to accomplish anything. That is, of course, the nature of an even number. That problem would be addressed by either **SCR 1601** or **3rs0941**.

The second issue is that of election versus appointment. While appointment may impact the ideological divisions, it does not guarantee such a change. I cannot imagine that the voters of Kansas would happily vote to give up their right to vote on SBOE representation, so appointment of the entire board would likely be difficult to pass. Appointment of some members, particularly if appointed by the Governor, would likely raise the importance of education policy in the eyes of both the Governor and the legislators who would confirm those appointments. Such a policy might be good for education in the long run.

The concept in **SCR 1611** takes a very interesting twist – a group of elected groups get to elect another body. While we expect elected officials to make law or adopt policy, we do not ask our elected officials to vote for us when it comes to representation. Would we have Representatives elect our Senators? **SCR 1611** divorces the voter from the election and from their representatives. Local board members get to elect the KASB board; that’s enough.

On the issue of non-partisan elections and moving the election to the spring, we are not sure if there would be a benefit here. While it is true that education should not be a republican or democratic

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thing, one might also argue that good government should not be a partisan thing. Most voters are probably already well-aware of the partisan leanings of candidates and the divisions within the Republican Party make this more likely. Non-partisan elections will simply remove the primary election from the equation. Whether or not this is a good policy is an issue that needs lots of discussion.

We are concerned about moving the election to the spring election if for no other reason than that the spring election tends to see a lower voter turn-out overall. The State Board of Education is a state-level office and we think it should remain with the state-level elections.

Finally, you have before you the issue of membership. The State Board of Education is the regulatory board of the education profession. It remains the only regulatory board on which the professionals in the field are not permitted to serve. Attorneys, physicians, dentists, barbers and hairdressers all serve on their regulatory boards. And in most cases, if not all, those boards *require* that practicing professionals serve. We hope that you will pass **HB 2179** which repeals the prohibition on school employees serving on the State Board of Education. This bill passed the House on a vote of 112-8.

§6.68 I. Holding Over In Public Office

The prevailing rule is that in the absence of constitutional or statutory provisions to the contrary, express or implied, an officer is entitled to hold office until his successor is chosen and has qualified. See 63A Am. Jr. 2d, *Public Officers and Employees*, §168 and *Murray v Payne*, 137 Kan. 685, 690, 21 P.2d 333 (1933). Upon the failure or refusal of the city council to confirm a new appointee to a city office, the incumbent officer continues in office until a successor is appointed and qualified, notwithstanding the absence of specific statutory authority for holding over in office. See Op. Att'y Gen. 155 (1981). See also Op. Att'y Gen. 155 (1988) where the Attorney General said that a city planning commission member whose term had expired could hold over in office until a successor was appointed. The officer should be regarded as a de facto officer and his acts should be regarded as valid. See *Hale v Bischoff*, 53 Kan. 301, 307, 36 P. 752 (1894). Further, the subsequent appointment should be for the unexpired term only so the staggering of terms would not be affected.

J. Vacancies In Office

§6.69 1. Meaning of Vacancy

The word "vacancy", as applied to a municipal elective or appointive office, has no technical meaning. It refers to the term or to the office and not the incumbent in the office. An office is vacant when it is unoccupied by a legally qualified incumbent. The office is not vacant as long as it is supplied with an incumbent who is legally qualified. The basic rule is that the law abhors vacancies in public offices and the courts will strongly presume a legislative intent to avoid the creation of a vacancy by operation of a statute. Therefore, statutes which define conditions under which a vacancy will occur will be strictly construed. See 67 C.J.S., §74a.

The Attorney General, in Op. Att'y Gen. 11 (1982), opined that the fact that a township treasurer was comatose did not create a vacancy since neither a physical nor mental disability resulted in a vacancy. The opinion suggested the condition of the incumbent could, however, constitute grounds for recall.

§6.70 2. How Vacancies Occur

Vacancies may occur through a variety of reasons. As noted later, the acceptance of an incompatible office results in an automatic vacancy in the first office under the common law rule of incompatibility of offices and under certain statutes such as KSA 25-123. The recall of an elected official results in a vacancy in office and so does the ouster of a public official. Further, the failure to maintain a residency requirement results in a vacancy. See Op. Att'y Gen. 121 (1986).

The resignation of an officer results in a vacancy upon the acceptance of the resignation by the proper authority. See Op. Att'y Gen. 35 (1982) and Op. Att'y Gen. 1 (1990). Without the acceptance, under common law, no vacancy occurs. See *State ex rel Topeka v Clayton*, 27 Kan. 442 (1882). The proper authority to accept the resignation is the same authority that has the power to fill the vacancy, absent specific statutory authority otherwise. See Op. Att'y Gen. 285 (1981)

and 3 McQuillin, *Municipal Corporation* (3rd Ed), §12.125. Further, a person cannot effectively resign an office until the term of that office has actually begun. See Op. Att'y Gen. 107 (1983) and 63 Am. Jur. 2d *Public Officers and Employees*, §165. A resignation once accepted, however, cannot be withdrawn. A quo warranto action is the proper remedy to determine right or title to a public office and to oust an incumbent who is unlawfully holding the office. See Op. Att'y Gen. 1 (1990).

The Attorney General has said that when a vacancy occurs in an elected office and a person is appointed to fill the unexpired term until the "next city election," the next city election means the next ensuing election at which city officers are elected even if the filing deadline for candidates seeking city office has passed. The unexpired term should appear on the ballot even if no one was able to file as a candidate. See Op. Att'y Gen. 24 (1985). See also Op. Att'y Gen. 92 (1979) and Op. Att'y Gen. 16 (1981) construing KSA 13-1806 to require a vacancy be filled at the next city general election.

Statutory procedures for filling vacancies are common as noted in the discussion of local government election laws earlier in this chapter.

§6.71 K. Dual Office Holding — Incompatibility

There is no general prohibition in Kansas against dual office holding. The general rule, in fact, is that one person may hold more than one office at the same time unless there is a constitutional or statutory prohibition or unless the offices are deemed incompatible under the common law doctrine of incompatibility of offices. See, for example, *Abry v Gray*, 58 Kan. 148, 48 P. 577 (1897) and KSA 25-123 which permits a person to hold more than one office he or she has simultaneously been elected to unless the offices are incompatible.

See *USD No. 501 V Baker*, 269 Kan. 239, 6, P.3d 848 (2000), where the court found the common law doctrine of incompatibility of office applied to a school teacher who also was elected as a member of the school board. The court held that the doctrine applies in the absence of a specific legislative expression on dual office holding. The doctrine stands for the proposition that the same person may not hold two incompatible offices with each other as a matter of public policy. Further, the doctrine applies to persons holding a public office and a position of public employment irrespective of whether the person draws two salaries. The court said that it was inimical to the public interest for the one in public employment to be both the employer and the employee or the supervisor and the supervised. The court held that the positions of school teacher and school board member in the same school district are incompatible and that the employment as a teacher endures but this status makes the person disqualified from serving on the board.

There are various constitutional and statutory restrictions, on simultaneous candidacy and on dual office holding. In addition, the courts and the Attorney General have opined that a number of local government offices are incompatible. The following is a discussion of these statutes, cases, and opinions.

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§6.72 1. Simultaneous Candidacy — General Law and Cities and Schools

KSA 25-213 provides that no name which is printed on the official ballot for national and state offices shall be printed or written elsewhere on the ballot or on the official primary election ballot for county or township offices except for precinct committeeman or committeewoman. The reverse is also provided in regard to names on the ballot for county and township offices which cannot appear for national or state offices.

The statute does not apply to city elections and therefore a person has the right to seek nomination or become a candidate for more than one city office at the same election according to the Attorney General in Op. Att'y Gen. 10 (1983). Further, a person may be a candidate for a city office and for a seat on a board of education. See Op. Att'y Gen. 248 (1979). But see Op. Att'y Gen. 20 (1997) which said a person may not accept nominations as both a partisan candidate and as an independent candidate for the Overland Park City Council.

§6.73 2. Constitutional Restrictions

No member of Congress or officer or employee of the United States Government is eligible to be a member of the Kansas Legislature under Article 2, §5 of the *Kansas Constitution*. Justices of the Supreme Court and judges of the district court may not hold any other state or federal office except as provided by law under Article 3, §13. Further, justices of the supreme court and judges of the district court selected by the nonpartisan method may not hold any office in a political party or organization under Article 3, §8 of the *Kansas Constitution*.

§6.74 3. Statutory or Ordinance Dual Office Holding Restrictions

The mayor and commissioners in cities of the first class are prohibited from holding any state, federal, county or other city office nor may they be appointed to any city created office until two years after they have ceased to be a member of the city governing body under KSA 13-1802. See also KSA 14-1302 for a similar rule covering city commissions of cities of the second class.

City civil service commissioners may not hold or be a candidate for any office of public trust under KSA 13-2201 and 13-2204. Other dual office holding statutory restrictions involving cities include: library board members under KSA 12-1222; cemetery board members under KSA 12-1420; urban renewal commissioners or officers under KSA 17-4758; zoning board members under KSA 12-714 and KSA 12-723; and members of metropolitan transit authorities under KSA 12-2815.

A city may prohibit a city firefighter from running for the city council without violating the firefighter's First Amendment rights. See Op. Att'y Gen. 72 (1992).

Statutory restrictions involving counties and other local units of government include: members of the county board of zoning appeals who may not hold "any other public office or position in the municipality or county" except that one member

shall be a member of the planning commission under KSA 19-2934); county commissioners who may not hold any other state, county, township or city office but may be appointed to state boards under KSA 19-205; county attorneys who cannot hold any judicial or other county office under KSA 19-705; and county treasurers who may not hold the office of sheriff, probate judge, county attorney, county clerk, clerk of the district court, or the deputy of any of them, nor be a member of the board of county commissioners under KSA 19-505.

No school superintendent, deputy assistant, or associate superintendent, supervisor, or principal may be a member of a board of education under KSA 72-8202b. Any officer or employee in the state classified service must resign from the service upon filing as a candidate for an elective office, unless the elective office filed for is a township elective office, a county elective office, an elective office in the judicial branch of government or is elected on a nonpartisan basis under KSA 75-2953(2). Further, no member of the highway patrol may hold any other commission or office, elective or appointive, except in the Kansas National Guard or in the organized reserves of the United States Army, Air Force, or Navy, or accept any other employment while he is a member of the patrol under KSA 74-2113(d).

§6.75 4. What Constitutes Common Law Incompatibility

The court, in *Dyche v Davis*, 92 Kan. 971, 977, 142 P. 264 (1914), pointed out that it is difficult to give a definition of incompatibility that will have universal application so that the best way to determine incompatibility is by an examination of the cases dealing with the subject. Certain rules for determining incompatibility include that incompatibility arises when the performance of the duties of one office in some way interferes with the performance of the duties of the other. It involves something "more than a physical impossibility" of discharging the duties of both and encompasses the notion that there is an inconsistency in the function of the two offices. Another important test of incompatibility is whether one office is subordinate to the other. A related test involves where one office operates as a check and balance on another office. Below are lists of compatible and incompatible offices declared such by the Kansas Supreme Court or by opinion issued by the Attorney General. The lists with several additions by the author are taken from "Legal Aspects of Public Office," League of Kansas Municipalities, October 1990, pp. C-9 to C-11.

§6.76 5. Compatible Offices

1. City clerk and clerk of district court (*Abry v Gray*, 58 Kan. 148, 48 P. 577 (1897)).
2. Fish and game warden and zoology professor at a state university (*Dyche v Davis*, 92 Kan. 971 (1914)).
3. Food and drug inspector and hotel commissioner (*Congdon v Knapp*, 106 Kan. 206, 187 P. 660 (1920)).

4. City engineer and county engineer (Attorney General Letter 3/29/63).
5. Sheriff or postmaster and supervisor of soil conservation district (Attorney General Letter 4/22/64).
6. Elected official and county chairman of political party (Attorney General Letter 7/21/64).
7. Municipal judge of city of second or third class and member of board of education (Op. Att'y Gen. 21 (1981)).
8. Clerk of district court and secretary to a county judge (Op. Att'y Gen. 251 (1973)).
9. State legislator and member of board of trustees of a community college (Op. Att'y Gen. 110 (1973)).
10. County sheriff and city chief of police (Op. Att'y Gen. 36 (1975)).
11. Urban renewal board member and member of board of education (Op. Att'y Gen. 48 (1975)).
12. County attorney and city attorney (3rd class city) (Op. Att'y Gen. 61 (1975)).
13. Clerk of district court and part-time dispatcher for county sheriff (Op. Att'y Gen. 103 (1975)).
14. City commissioner and attorney for drainage district (Op. Att'y Gen. 157 (1975)).
15. County attorney and municipal judge, so long as not in the same county (Op. Att'y Gen. 452 (1975)).
16. Councilmember and commissioner of city housing authority under KSA 17-2337 *et seq.* (Op. Att'y Gen. 36 (1976)).
17. Councilmember of city of third class and administrator of municipal hospital operated under KSA 12-1615 (Op. Att'y Gen. 143 (1977)).
18. Councilmember of city of third class and township officer (Op. Att'y Gen. 50 (1975)).
19. Clerk or deputy clerk of district court and clerk of municipal court (Op. Att'y Gen. 357 (1977)).
20. County attorney and member of board of education (Op. Att'y Gen. 315 (1978)).
21. Teacher, school bus driver or other employee and member board of education (Op. Att'y Gen. 108 (1979) and Op. Att'y Gen. 15 (1991)). This opinion was rejected by the Kansas Supreme Court in *USD No. 501 v Baker* 269 Kan. 239, 6, P.3d 848 (2000) discussed earlier.
22. Township board member and township road overseer's assistant (Op. Att'y Gen. 242 (1979)).
23. Mayor of city of second class and state representative (Op. Att'y Gen. 134 (1980)).
24. County commissioner and filter plant operator for city water department (Op. Att'y Gen. 158 (1980)).
25. Municipal judge and board of education member (Op. Att'y Gen. 21 (1981)).
26. Mayor of city of third class and election commissioner (Op. Att'y Gen. 45 (1981)).
27. Mayor and volunteer firefighter (Op. Att'y Gen. 74 (1981)).
28. Mayor and dog catcher where that duty is vested in mayor by ordinance and no additional compensation is paid (Op. Att'y Gen. 49 (1982)).
29. Deputy sheriff and mayor (Op. Att'y Gen. 8 (1985)).
30. County commissioner and property appraiser (Op. Att'y Gen. 6 (1986)).
31. County commissioner in county with a consolidated law enforcement agency and retail liquor licensee (Op. Att'y Gen. 99 (1986)).
32. City councilmember and chief attorney of State Department of Social and Rehabilitation Services (Op. Att'y Gen. 9 (1988)).
33. City treasurer and school board member (Op. Att'y Gen. 21 (1989)).
34. Councilmember of city of second class and volunteer firefighter (Op. Att'y Gen. 76 (1989)).
35. County treasurer and school board member (Op. Att'y Gen. 11 (1991)).
36. County election officer and local or state officer of a political party (Op. Att'y Gen. 63 (1993)).
37. A worker's compensation administrative law judge may also serve as a municipal court judge (Op. Att'y Gen. 61 (1995)).

38. A city public works director (determined not to be an officer) and a member of the county commission (Op. Att'y Gen. 11 (1999)).

§6.77 6. *Incompatible Offices*

1. City clerk and county commissioner (*State v Pymell*, 46 Kan. 294, 26 P. 479 (1891) and Op. Att'y Gen. 136 (1981)).
2. Mayor and councilmember (*Gilbert v Craddock*, 67 Kan. 346, 72 P. 869 (1903)).
3. County attorney and clerk of district court (*Moore v Wesley*, 125 Kan. 22, 262 P. 1035 (1928)).
4. City attorney and member of board of zoning appeals or member of library board (Attorney General Letter 3/7/60).
5. Cemetery board member and city commissioners (Op. Att'y Gen. 48 (1961)).
6. Probate judge and city attorney (Attorney General Letter 7/28/72).
7. City councilmember and health officer under KSA 68-205 (Attorney General Letter 11/21/72).
8. Mayor and city law enforcement officer (Op. Att'y Gen. 233 (1973)).
9. Councilmember and city law enforcement officer (Op. Att'y Gen. 422 (1973)).
10. County attorney and city councilmember (Op. Att'y Gen. 214 (1974)).
11. City clerk and city treasurer (Op. Att'y Gen. 446 (1975)).
12. Councilmember and member of planning commission (Op. Att'y Gen. 212 (1977)).
13. City commissioner of city of second class and member of board of education (Op. Att'y Gen. 248 (1979)).
14. County commissioner and board of education member (Op. Att'y Gen. 255 (1979); Op. Att'y Gen. 176 (1981)).
15. Municipal judge or fire chief of city of second class and mayor or city councilmember (Op. Att'y Gen. 74 (1981)).
16. County commissioner or mayor of city of the third class and school board member (Op. Att'y Gen. 176 (1981); Op. Att'y Gen. 8 (1982)).

17. Councilmember of city of third class and police commissioner (Op. Att'y Gen. 178 (1981)).
18. County commissioner and part-time sewer inspector (Op. Att'y Gen. 111 (1982)).
19. Councilmember and municipal judge (Op. Att'y Gen. 107 (1981)).
20. Mayor or city councilmember or commissioner and fire chief (Op. Att'y Gen. 249 (1981); Op. Att'y Gen. 106 (1981); Op. Att'y Gen. 106 (1982); Op. Att'y Gen. 8 (1982)).
21. County commissioner and county clerk (Op. Att'y Gen. 284 (1981)).
22. County commissioner and city police or reserve deputy sheriff (Op. Att'y Gen. 8 (1982)).
23. Board of trustees of community college and city councilmember (Op. Att'y Gen. 9 (1983)).
24. County commissioner and hospital trustee (Op. Att'y Gen. 11 (1983)).
25. Councilmember of city of second class and reserve law enforcement officer (Op. Att'y Gen. 76 (1989)).
26. Council member and city hospital trustee (Op. Att'y Gen. 29 (1993)).
27. City commissioner and deputy sheriff (Op. Att'y Gen. 98(1991)).
28. Assistant city treasurer and a member of the Board of Public Utilities (Op. Att'y Gen. 139 (1992)).
29. County attorney and zoning administrator (Op. Att'y Gen. 154 (1991)).
30. A county commissioner may not serve as a member of the district judicial nominating commission due to KSA 20-2906 (Op. Att'y Gen.10 (1994)).
31. A precinct committeeman is a person who holds a public office and may not serve on the district judicial nominating commission (Op. Att'y Gen. 165 (1994)).
32. A person may not concurrently serve as a member of the State Board of Education and of a local school board (Op. Att'y Gen. 113 (1994)). This opinion was supported by *USD No. 501 v Baker* 269 Kan. 239, 6 P.3d 848 (2000) discussed earlier.
33. A member of the municipal insurance pool is prohibited from serving on the board of the Kansas

Association of Counties (KAC) since the KAC had contracted to act as manager and administrator of the pool (Op. Att'y Gen. 61 (1995)).

**§6.78 7. Acceptance of An Incompatible Office;
Self Appointment to an Office**

The common law rule about acceptance of an incompatible office is that the first office is automatically vacated. The rule is stated in 3 McQuillin, §12.67 as follows:

The common law rule is that the acceptance by a public officer of another office which is incompatible with the first thereby vacates the first office; that is, the mere acceptance of the second incompatible office per se terminates the first office as effectively as a resignation. Public policy demands that an officeholder discharge his duties with undivided loyalty

Some jurisdictions have enlarged the doctrine to apply to both public offices and public employment without distinction. See 70 A.L.R. 3rd 1188. Note that no judicial determination or formal resignation is necessary. Thus, in *Gilbert v Craddock*, 67 Kan. 346 (1903), the court noted that a councilmember elected as mayor takes the office of mayor without first resigning the office of councilmember because being sworn to the office of mayor automatically vacates the office of councilmember. Similarly, in *Moore v Wesley*, 125 Kan. 22 (1928), a county attorney who accepted the office of deputy clerk of the district court was held to have relinquished the office of county attorney, not only because holding both offices was forbidden by statute but also because they were inherently incompatible.

The common law rule of automatic removal from the first-held office has been codified in several Kansas statutes, including KSA 25-123 which provides:

“When a person is simultaneously elected to more than one office, such person may accept any such offices that are not incompatible with any other office accepted by such person. If a person accepts election to incompatible offices, the person shall be deemed to have accepted the office last accepted and to have declined any previously accepted incompatible office.”

Several statutes, likewise, provide that where the president of a city council becomes mayor upon a vacancy in the office of mayor, the office of that councilmember becomes vacant upon acceptance of the mayor's office. See KSA 13-513, 14-205 and 15-209 and Op. Att'y Gen. 10 (1983) and Op. Att'y Gen. 19 (1985).

The Attorney General has said that the common law prevents an officer from using his official appointing power to place himself in another office. The Attorney General advised that a provision of a charter ordinance authorizing a former city commission member of a city of the second class be

amended to contain a provision abrogating the common law rule. A current member of the city commission planned to resign in order to accept the position of city mayor. See Op. Att'y Gen. 46 (1998).

Note: the Kansas Supreme Court in *USD No. 501 v Baker* 269 Kan. 239, 6, P.3d 848 (2000) declined to follow the prior case law and common law rule regarding forfeiture of the first office in the situation where a teacher assumed a second incompatible office when elected to a position on the school board. The court said the normal forfeiture of the first office or position rule would be inequitable. The court held instead that the person's teaching position endured but that the person was disqualified from serving on the school board.

L. Public Official Bonds

§6.79 1. Overview of Bonding Requirements

Local government officials whose duties involve the custody or disbursement of public funds or involve themselves with frequent controversy with individual citizens are usually required to give a bond in order to protect the municipality from loss due to negligence or dishonesty. See 56 Am. Jur.2d, §291.

A number of local government officials in Kansas are required by statute to give a bond in varying amounts. Regarding cities, see, for example, KSA 13-1805 for bonds for members of city commissions of cities of the first class; KSA 13-2108 and 13-2109, regarding bonds for city of the first class auditors and engineers, respectively; and KSA 14-205 regarding elected and appointed city of the second class officers as designated by city councils. Examples of specific bonding requirements for county officers include KSA 19-301 for county clerks, KSA 19-501 for county treasurers and KSA 19-701 for county attorneys. A statute of general application, KSA 19-4201 *et seq.* requires each county elected official to provide a corporate surety bond in an amount and according to the terms specified by the board of county commissioners. The board of county commissioners is also required to designate the appointive officers and employees that are to be required to give a bond under KSA 19-4202. Blanket bonds are authorized under KSA 19-4203. Note KSA 19-4206 states that this law supersedes other statutes which establish bond requirements for county officials. Both cities and counties under home rule also may establish bond requirements for local officials.

Township treasurers must execute bonds under KSA 80-203. School district treasurers, likewise, are required to post bonds. See KSA 72-8202d. Various other special district governments require certain officials to execute bonds. See, for example, KSA 19-3505 which requires members of the Johnson County Water District No. 1 board of directors to post a corporate surety bond.

§6.80 2. Liability on the Surety Bonds

Several court decisions shed light on various rules and the scope of liability of surety companies on bonds for public official bonds. In *Kansas City v Burns*, 137 Kan. 905, 22

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P.2d 444 (1933), the court held that a city had the burden of proof to show by a preponderance of evidence that a shortage existed in the funds belonging to the city and handled by the cashier of the city water and light department during the term of the bond. The court reaffirmed the general rules of liability established in an earlier case, *City of Oswego v Condon*, 124 K. 823, 262 P. 542 (1928), which stated that it was necessary for the plaintiff to show three specific facts:

1. The amount of money the officer had on hand at the beginning of the accounting period,
2. The amount of money that came into the officer's hands during the period covered by the accounting, and
3. The amounts of disbursements lawfully made by the officer during the accounting period (p. 824.)

The *Burns* court held, however, the three factors listed above could not be literally applied in a case where a cashier kept no books and made daily settlements but was not expected to retain funds on hand except funds for making change.

In *State, ex rel Grassie v Masterson*, 221 Kan. 540, 549, 561 P.2d 796 (1977), dealing with embezzlement by a county treasurer, the court held that the cause of action accrued at the end of each term of office or when the office is relinquished or when a demand was followed by a refusal and was not based on the treasurer's failure to file quarterly reports or settle accounts with the board of county commissioners. The court, likewise, held that a three-year statute of limitations applied under KSA 60-512(2).

See, also, *City of Topeka v Independence Indemnity Co*, 130 Kan. 650, 287 P. 708 (1930), where the court held that a surety company was liable on the bond for a city commissioner of finance who learned that a city depository bank was failing but took no action to protect city funds. The court concluded that this conduct constituted neglect of duty for which his surety was liable. For a case involving liability of a surety due to the liability of a township treasurer when a depository bank failed, see *Rose v Douglass Township*, 52 Kan. 451 (1893). In *City of Anthony v Corbin*, 133 Kan. 337, 299 P. 603 (1931), the court held that a surety was liable on the bond for the city clerk where the clerk allowed claims against the city to be paid which he knew were illegal. The claims were for radio equipment purchased by the city clerk for his own use and the use of his friends. Forgery and misappropriation of a check by a county treasurer was held to be breach of a bond in *Cherokee County Commissioners v United States Fidelity and Guarantee Co.*, 141 Kan. 301, 40 P.2d 371 (1935). The failure of a county treasurer to present a check for payment within a reasonable time where a trust company failed in the interim constituted a breach of the bond in *Amusement Co. v Eddy*, 143 Kan. 988, 57 P.2d 458 (1936).

M. Quo Warranto, Ouster, and Public Officers

§6.81 1. Quo Warranto Overview

Quo warranto is a civil action under KSA 60-1210, which has been described as a writ of inquiry as to the warrant, authority or right for doing acts against him who has claimed or usurped any office, franchise or liberty. See 65 Am. Jur 2d Quo Warranto §1 and *Black's Law Dictionary* 1417 (Rev. 4th ed. 1968).

The Kansas Supreme Court has original jurisdiction in quo warranto actions under the *Kansas Constitution*, Article 3, §3 and KSA 20-101. The action, however, may also be brought in district court under KSA 60-1202.

See *Umbehr v Board of Wabaunsee County Commissioners*, 252 Kan. 30, 843 P. 2d 176 (1992), where the court discusses the use of quo warranto, mandamus and injunction as means to seek relief from illegal, fraudulent or oppressive actions of public officials and boards.

The court in *Long v Board of Wyandotte County Commissioners*, 254 Kan. 207, 864 P. 2d 724 (1993), said mandamus was not an appropriate action to compel a board of county commissioners to pay for the legal fees of a sheriff who hired counsel by his own action. The only acts of public officials the court can control are those acts that are purely ministerial. The court said the dispute was over whether attorney fees were owed and the amount of such fees. Nor is mandamus an appropriate means to enforce a right which is in substantial dispute. The court in *Board of Harvey County Commissioners v Whiteman* 23 KA2d 634, 933 P.2d 771 (1997) said that the county's right to recover the full amount of detention expenses of a juvenile in SRS custody was in substantial dispute and as a result mandamus was not an appropriate means to resolve the issue. The Supreme Court in *Legislative Coordinating Council v Stanley* 264 Kan. 690, 957 P.2d 379 (1998) held that mandamus was an appropriate means, however, to force the Secretary of the Department of Administration and the Director of Accounts and Reports to pay for court costs and attorney fees in an election contest involving a seat in the Kansas House of Representatives.

§6.82 a. Grounds for Quo Warranto

The grounds for bringing a quo warranto action are listed in KSA 60-1202. Those grounds which relate specifically to public officers include: (1) to question any person who shall usurp, intrude into or unlawfully hold or exercise any public office; or shall claim any franchise ..., or any office in any corporation and (2) to inquire into actions of public officers that work as a forfeiture of the office. See Op. Att'y Gen. 1 (1990).

§6.83 b. Who May Maintain a Quo Warranto Action

In ouster proceedings, the law is clear that only the Attorney General or the county or district attorney may institute an ouster action. See KSA 60-1203 and KSA 60-1206(a). As to quo warranto proceedings other than ouster involving public officers, the rule established by the courts is that the person

in L. 1990, ch. 306, subject to home rule charter ordinance by cities. This law no longer sets any limitations on campaign expenditures for public office. Prior to 1976, the law capped at \$500 the amount of expenditures that could be made for public offices where annual compensation was less than \$1,000. See KSA 25-903 as it existed at L. 1974, ch. 158.

§6.105 1. *Election Promoter Reporting Requirements*

The state law requires that every committee, club, organization, municipality or association which promotes or engages in promoting the success or defeat of any party, candidate or question submitted election must comply with certain requirements. These include: the appointment of a treasurer; the keeping of detailed accounts of money; property and other things of value received; and the manner in which these were expended. Further, an annual report or statement must be filed with the county election officer in the county where the group has its headquarters showing a detailed statement of all its receipts and expenditures. The report must show from whom the money or property was received and to whom the money, property or other things of value were paid, the specific purposes for which the payments were made and the exact nature of the service rendered. The annual statement must be filed on or before December 31, covering the period ending December immediately preceding. See KSA 25-901.

The Attorney General has offered some guidance about the type of activities covered and the nature of the reporting required by KSA 25-901 *et seq.* For example, the Attorney General said the annual statement required by KSA 25-901 did not apply to a club organized for the sole purpose of obtaining views of constituents. See *Op. Att'y Gen.* 49 (1974). The Attorney General also opined that groups established to promote the adoption or defeat of the method of selecting judges, which involve a state rather than a local concern, were not covered by KSA 25-901. See *Op. Att'y Gen.* 5 (1981). On the other hand, the expenditure of county moneys by a board of county commissioners for the purpose of promoting a local sales tax question was said to be subject to reporting requirements of KSA 25-901. See *Op. Att'y Gen.* 129 (1981). In regard to reporting detail, the Attorney General said that reporting of aggregate receipts from fund-raising dinners and similar events was not sufficient. Rather reporting must reflect the payment for each ticket or group of tickets purchased by an individual. Similarly, all expenses of a fund-raising function must be reported. See *Op. Att'y Gen.* 248 (1978).

§6.106 2. *Candidate Reporting Requirements*

Every candidate for nomination or election to the local units subject to KSA 25-901 must file an itemized statement, under oath, stating the name and address of each person who contributed more than \$50 during the election period. In addition, the amount and date of the contributions and an itemized statement of expenditures made by the candidate or obligations contracted or incurred in connection with each primary, general or special election with the county election officer within 30 days of the election. See KSA 25-904.

§6.107 3. *Reporting Exemption*

Candidates who intend to spend and receive contributions in an amount less than \$500, exclusive of the filing fee, in each primary and general election, must file an affidavit for a reporting exemption with the county election officer not later than the 9th day preceding the primary election. Also excluded from the reporting requirements of this act are those candidates covered by the Kansas Campaign Finance Act, KSA 25-4142 *et seq.* Any candidate who files an reporting exemption affidavit that incurs expenses or receives contributions in excess of the \$500 limit must file the reports required. See KSA 25-904.

§6.108 4. *Penalty Provisions*

Violations of the requirement for appointing a treasurer or filing an annual statement are unclassified misdemeanors with fines of not to exceed \$100. See KSA 25-902.

Violations of the candidate reporting requirement are, likewise, treated as unclassified misdemeanors with fines of not to exceed \$1,000. County election officers are required to notify the candidate within 10 days of the report filing deadline. The candidate then has 10 additional days from the time of receipt of the notice to comply.

See, on the other hand, the *Code of the City of Wichita, Kansas*, §2.56.120 which makes violations of its campaign contributions and reporting ordinance unclassified misdemeanors punishable by either, or both, a fine of not to exceed \$500 and imprisonment of one year.

KSA 25-903 and portions of KSA 25-905 which created different penalties and forfeitures for candidates depending on the office being sought were the subject of a state district court opinion in 1973. See *State v Kern*, No. 28, 355 and *State v Love*, No. 28, 356, 8C of Shawnee County, filed Jan. 31, 1973. The district court held these provisions were arbitrary classifications denying equal protection. The legislature repealed KSA 25-903 in 1976. See L. 1976, ch. 193.

D. Conflict of Interest — Statutory Provisions

§6.109 1. *Kansas Conflict of Interest Act*

The Kansas Conflict of Interest Act, KSA 75-4301 *et seq.*, has a twofold purpose: (1) to require disclosure of substantial business interests of local government officials; and (2) to prohibit any public officer or employee from participating in the making of any contract on behalf of the local government or business in which the official or employee has a substantial interest, *i.e.* self-dealing. See KSA 75-4304.

§6.110 a. *Local Units and Persons Covered By the Act*

The act basically covers all local units of government; all candidates for local office; local government officers and certain local government employees. The key term defined is "governmental subdivision" which means any city, county, township, school district, drainage district or other governmental subdivision of the state having authority to receive or hold public moneys or funds. See KSA 75-4301a(f).

In addition, the law covers and defines "candidate for local office," "local governmental officers" and "local government employees." See KSA 75-4301a(c)(d)(e). Note in particular the definition of "local government officer" which includes both elected and appointed officers of a governmental subdivision or any of its agencies.

b. Conflict of Interest — Substantial Interest

§6.111 i. Definition of Substantial Interest

The act does not define the term "conflict of interest" but implicitly equates this term with the term "substantial interest" which is defined as follows in KSA 75-4301(a):

1. If an individual or an individual's spouse, either individually or collectively, has owned within the preceding 12 months a legal or equitable interest exceeding \$5,000 or 5% of any business, whichever is less, the individual has a substantial interest in that business.
2. If an individual or an individual's spouse, either individually or collectively, has received during the preceding calendar year compensation which is or will be required to be included as taxable income on federal income tax returns of the individual and spouse in an aggregate amount of \$2,000 from any business or combination of businesses, the individual has a substantial interest in that business or combination of businesses.
3. If an individual or an individual's spouse, either individually or collectively, has received in the preceding 12 months, without reasonable and valuable consideration, goods or services having an aggregate value of \$500 or more from a business or combination of businesses, the individual has a substantial interest in that business or combination of businesses.
4. If an individual or an individual's spouse holds the position of officer, director, associate, partner or proprietor of any business other than certain not for profit corporations, the individual has a substantial interest in that business, irrespective of the amount of compensation received by the individual or individual's spouse.
5. If an individual or an individual's spouse receives compensation which is a portion or percentage of each separate fee or commission paid to a business or combination of businesses, the individual has a substantial interest in any client or customer who pays fees or commissions to the business or combination of businesses from which fees or commissions the individual or the individual's spouse, either individually or collectively, received an aggregate of \$2,000 or more in the preceding calendar year.

A client or customer means the same thing as a business or combination of businesses in the above five-part definition of substantial interest.

The law, as will be more fully explained below, prohibits public officials from participating in the making of contracts with businesses in which they have a substantial interest or taking other actions in regard to the business without first disclosing their interest.

§6.112 ii. Definition of Business

Substantial interests can only be held in a "business" defined as: "any corporation, association, partnership, proprietorship, trust, joint venture and every other business interest, including ownership or use of land for income." See KSA 75-4301a(b). Under prior law, the Governmental Ethics Commission had interpreted an identical definition of "business" to include social service agencies, churches, professional associations and other non-profit groups. This broad interpretation will not continue under the new law due to the exclusion of certain not for profit corporations. It is not clear whether the term "business" includes other government entities. Under prior law, the commission had said other municipal corporations were not businesses but the prior law contained definitions of the terms "municipal corporation" and "quasi-municipal corporations." See KSA 75-4301 (1989) and Ethics Opinion Nos. 75-64, 79-12, 80-10 and 84-7. See also Op. Att'y Gen. 49 (1984) which said that absent a statute such as KSA 13-2903 (repealed in 1998) which disqualified relatives of the mayor or any commissioner in cities of the first class operating under the commission form of government from holding a city office or a similar local ordinance, a city councilman may take action upon remuneration or other matters affecting a city office held by his or her spouse. The opinion said such action in no way involved a contract covered by KSA 75-4304 nor did it violate the common law rule of conflict of interest.

§6.113 iii. Common Law Conflict of Interest Rule

It may be helpful to contrast the statutory treatment of conflict of interest and substantial interest with the common law conflict of interest rule recognized by the Kansas Supreme Court in cases such as *Anderson v City of Parsons*, 209 Kan. 337, 496 P.2d 1333 (1972). The court stated:

"We, of course recognize the common law principle that a public officer owes an undivided duty to the public whom he serves and is not permitted to place himself in a position that will subject him to conflicting duties or cause him to act other than for the best interest of the public. If he acquires any interest adverse to those of the public, without a full disclosure it is a betrayal of his trust and a breach of confidence (*United States v Carter*, 217 U.S. 286, 54 L. Ed 769, 30 S. Ct. 515 (1910))."

The law, however, does not forbid the holding of an office and exercising powers thereunder because of a possibility of a future conflict of interest.

The *Anderson* case specifically held that KSA 17-4758, which prohibits city governing body members and urban renewal commission members from acting on urban renewal projects involving property which they own, only applies to specific projects under consideration at a certain point in time. The court said the statutory prohibition did not apply when the official owned property in a general urban renewal area designated in the city.

The Attorney General in Op. Att'y Gen. 141 (1985), relying on the common law rule enumerated in *Anderson*, opined that a city councilmember was prohibited from making or voting on a motion to have the city pay for attorney fees incurred by him in a civil action. See also *City of Concordia v Hagaman*, 1 KA 35 (1895) in which a city councilmember was employed by the city to do some printing work and the city later refused to pay for it. Syllabus 2 of the Opinion states:

"In absence of a penal prohibitive statute, on grounds of public policy alone, an express contract entered into between the mayor and council of a city of the second class and one who is at the time a councilman of such city, for the performance of services for the city, will not be enforced. Such contract, while not absolutely void, may be avoided by the city, at will, so long as it remains executory."

See also 63A Am. Jur.2d *Public Officers and Employees*, section 324, where it is stated that at common law a conflict of interest existed if an administrative official voted on a matter in which he or she had a personal, direct and pecuniary interest.

§6.114 c. *What the Law Requires*

The law requires local government officers and employees to disclose substantial interests in businesses and to abstain from making or participating in the making of contracts where their substantial interests are implicated. Further, local officials may not "act on any matter" where their substantial interests are implicated unless a substantial interest disclosure has been made. See KSA 75-4304.

§6.115 i. *Disclosure Requirements — Filing*

All candidates for local elective office and persons appointed to such offices must comply with certain disclosure requirements which involve the filing of statements of substantial interests at the times specified. Note if an individual or individual's spouse holds an office or position with certain not for profit corporations, disclosure requirements must be complied with notwithstanding the exclusion of these positions from the definition of "substantial interest." See KSA 75-4302a(e).

The disclosure requirements include the following:

1. Candidates for local office who becomes candidates on or before the filing deadline for their office must file statements not later than 10 days after the filing deadline, unless before that time the candidacy is officially declined or rejected.
2. Candidates for local office who become candidates after the filing deadline for the office must file such statements within five days of becoming a candidate, unless within that period the candidacy is officially declined or rejected.
3. Individuals appointed on or before April 30 of any year to fill a vacancy in an elective office of a governmental subdivision must file such statements between April 15 and April 30, inclusive, of that year.
4. Individuals appointed after April 30 of any year to fill a vacancy in an elective office of a governmental subdivision must file such statements within 15 days after the appointment.
5. Individuals holding an elective office of a governmental subdivision must file such statements between April 15 and April 30, inclusive, of any year if, during the preceding calendar year, any changes occurred in their substantial interests.

Statement of substantial interests are filed in the office where declarations of candidacy for the local governmental office sought or held by the individual are required to be filed. See KSA 75-4302a.

Further, under KSA 75-4305, local government officers or employees who have not filed disclosures of substantial interests must do so before acting on any matter which will affect any business in which the officer or employee has a substantial interest.

§6.116 ii. *Contract Making Limitations — Exceptions*

The law requires public officials to abstain from making or participating in the making of any contract with any business in which the official is employed or has a substantial interest. Further, no person or business may enter into any contract if a local government officer or employee, acting in that capacity, is a signatory to or a participant in the making of the contract and is employed by or has a substantial interest in the person or business. Note that this prohibition applies regardless of whether the substantial interest has been disclosed as required under the law. See KSA 75-4304.

The above rules do not apply if either (1) the contract is let after competitive bidding has been advertised for by published notice or (2) the contract is for property or services for which the price or rate is fixed by law. See KSA 75-4304(d).

Several Attorney General opinions issued under the prior law would seem to apply to the 1990 law. For example, the Attorney General, in Op. Att'y Gen. 144 (1982), said that a county commissioner who owns an automobile battery business may not participate in contract proceedings regarding the sale of batteries by his firm to the county. Further, if his business receives more than \$1,000 in income from the contractors who bid in county projects he may not be able to participate in these contract proceedings. Further, the Attorney General has said that an attorney was not precluded from holding the office of county counselor because the attorney's spouse owned the official county newspaper but that the attorney must file a statement of substantial interest noting that fact. See Op. Att'y Gen. 170 (1982). The Attorney General said the rule was somewhat different for a county commissioner whose spouse owned the official county newspaper. The Commissioner was said to be required to file a statement of substantial interest and to refrain from any participation in the making of contracts with the newspaper. See Op. Att'y Gen. 98 (1983).

A school board member does not make or participate in making a contract by casting a vote for a resolution urging the legislature to pass or defeat legislation that may benefit the board member's personal situation *i.e.* a voucher system. Further, school board members who have children in the school system do not violate conflict of interest laws by voting on measures that will affect their children as part of the student body. See Op. Att'y Gen. 114 (1991).

§6.117 iii. *Limits on Other Actions of Public Officials*

In addition to contract limitations noted above, no local government officers or employees may act on matter affecting any business in which they have a substantial interest unless a substantial interest disclosure has been made with the county election officer of the county encompassing the largest portion of the governmental subdivision. See KSA 75-4305.

§6.118 d. *Penalty Provisions*

Failure to file the required substantial interest statements or acting on contracts in violation of the law are class B misdemeanors. Further, any local official convicted of violating the contract provisions forfeits his or her office or employment. See KSA 75-4306 and 75-4304(e), respectively. See *State v Edgington*, 223 Kan. 413, 573 P.2d 1059 (1978), in which the court held that a prior prosecution of the crime of failure to file a change in a substantial interest statement did not constitute double jeopardy in a subsequent perjury trial resulting from a failure by the defendant to disclose certain income in a divorce proceeding.

§6.119 2. *Local Regulations of Conflict of Interest*

Some cities and counties have enacted conflict of interest rules of their own. Local ordinances or resolutions need to be checked for details. See *Legal Aspects of Public Office*, League of Kansas Municipalities, October, 1990, pp. B-3 to B-8 for two samples of local conflict of interest ordinances.

§6.120 3. *Nepotism as a Form of Conflict of Interest*

Several statutes deal with the issue of related persons serving as officers of the same local unit of government. For example, KSA 13-2903, repealed in 1998, disqualified relatives by blood or marriage of the mayor and city commissioners of cities of the first class operating under the commission form of government from serving as offices of the city. The son of a city commissioner was said to be disqualified from being appointed as a city police officer. See Op. Att'y Gen. 46 (1996). KSA 14-537 provides that no member of a park commission of a city of the second class may be related by blood or marriage to the mayor, to any member of the city governing body or to any city officer. Some cities and counties have also adopted nepotism rules at the local level.

The Attorney General has said that related persons otherwise qualified may concurrently serve as members of the governing body of a city of the third class having a mayor council form of government. A person related to a governing body member may also serve as city clerk. See Op. Att'y Gen. 88 (1981) and Op. Att'y Gen. 49 (1984). The Attorney General also said, in Op. Att'y Gen. 89 (1986), that a marital relationship between a school board member and an attorney for the school district did not create a conflict of interest but that the school board member had to abstain from matters dealing with matters involving the attorney's spouse or the firm which employed the spouse. See also Op. Att'y Gen. 32 (1991) which said no conflict existed when a county sheriff was married to the clerk of the district court.

KSA 46-246a establishes a nepotism rule for state government officers and employees.

§6.121 4. *The Federal Hatch Act and Local Governments*

The federal Hatch Act (5 U.S.C. 1501 *et seq*) restricts the political activities of individuals principally employed by local executive agencies who work in connection with programs financed in whole or in part by federal loans or grants. Examples of the types of programs which frequently receive financial assistance from the federal government include:

1. Public health;
2. Public welfare;
3. Housing;
4. Urban renewal and area redevelopment;
5. Employment security;
6. Labor and industry training;
7. Public works;
8. Conservation;
9. Agricultural;

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10. Civil defense;
11. Transportation;
12. Anti-poverty; and
13. Law enforcement programs.

Local employees subject to political activity laws continue to be covered while on annual leave, sick leave, leave without pay, administrative leave or furlough.

Hatch Act provisions do not apply to:

1. Individuals who exercise no functions in connection with federally financed activities; or
2. Individuals employed by educational or research institutions, establishments, or agencies.

The law also exempts certain specified employees from the prohibition on candidacy for elective office. These exemptions include:

1. The mayor of a city;
2. A duly elected head of an executive department of a municipality who is not classified under a municipal merit or civil service system; and
3. An individual holding public elective office. The latter exemption applies only when the elective office is the position which would otherwise subject the employee to the restriction of the Hatch Act.

The following are permitted activities:

- May be a candidate for public office in a nonpartisan election;
- May campaign for and hold elective office in political clubs and organizations;
- May actively campaign for candidates for public office in partisan and nonpartisan elections;
- May contribute money to political organizations or attend political fund-raising functions; and
- May participate in any activity not specifically prohibited by law or regulation.

A local employee covered by the Hatch Act may not do the following:

- be a candidate for public office in a partisan election;
- use official authority or influence for the purpose of interfering with or affecting the results of an election or a nomination for office; and
- directly or indirectly coerce contributions from subordinates in support of a political party or candidate.

§6.122 5. Local Restriction on Political Activities of Public Employees

Some cities have restricted the political activities of their public employees. In *Ruff v City of Leavenworth* 858 F. Supp. 1546 (D. Kan. 1994) the court held provisions of a city personnel policy facially unconstitutional as overboard and vague. The policy banned employees from "personally, individually, or as a representative of said organization [to] publically endorse, solicit or collect campaign funds, or voice public support at public meetings or through the media or by other distributed materials, campaigning for or against candidates for any elective city office. However, employees could participate in informal meetings involving candidates for city elective offices. The purpose of this prohibition was to prohibit political activities by city employees in city elections. The case arose after two police officers were reprimanded for placing newspaper ads supporting the candidacy of two individuals for the city commission on behalf of the Fraternal Order of Police and making public statements endorsing those candidates. The ads were placed immediately after the city commission voted against bringing the city under the provisions of the Public Employer Employee Relations Act discussed in Chapter 7.

Curiously, the court prior to finding the Leavenworth policy unconstitutional on its face held that the policy as applied to the two officers was not unconstitutional. The Court said that the officers' interest in commenting on public elections was a strong one and struck close to the heart of the First Amendment, but, on the other hand, the city had a strong interest in insuring its employees who enforce the law did so without bias or favoritism, insuring employees public service depended on merit and not political affiliation and insuring the efficient delivery of quality services (p. 1553-54)

See *Clements v Fashing*, 457 U.S. 957, 102 S. Ct. 2836, 73 L. Ed 2d. 508 (1982), where the United States Supreme Court held that a person's candidacy for office did not involve a fundamental right therefor a strict scrutiny test of a state or local restriction was not necessary. The court ruled that a resign-to-run or automatic resignation provision requiring an office holder to resign his present post in order to seek another, satisfied the equal protection clause under the *U.S. Constitution* if supported by a rational purpose.

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