

MINUTES OF THE HOUSE ETHICS AND ELECTIONS COMMITTEE

The meeting was called to order by Chairman Don Myers at 3:30 p.m. on March 15, 2004 in Room 526-S of the Capitol.

All members were present.

Committee staff present:

Martha Dorsey, Legislative Research Department
Dennis Hodgins Legislative Research Department
Ken Wilke, Office of Revisor of Statutes
Shirley Weideman, Committee Secretary

Conferees appearing before the committee:

Carlos Mayans, Mayor of Wichita
Carol Williams, Governmental Ethics Commission Director
Kevin Anselmi, Crawford County Clerk

Others attending: See Attached List.

Chairman Myers announced that he would work House Sub for SB 166 Wednesday (using SB 166, gut and go) to address the disability issues as recommended by KAPS for the Help America Vote Act..

The chair opened the hearing on SB 376 - Campaign finance; use of unexpended campaign funds.

Chairman Myers requested that Ken Wilke, Revisor explain SB 376. Ken gave a history of events that preceded the bill. Carlos Mayans, former state representative, transferred approximately \$50,000 of unused legislative campaign funds to his election campaign for Mayor of Wichita. (Attachment 1) Mr. Mayans obtained Opinion 2002-20 dated July 18, 2002 from the Kansas Governmental Ethics Commission. (Attachment 2) Through his attorney, Mr. Mayans obtained Opinion 2003-05, dated February 20, 2003 from KGEC, which held that pursuant to K.A.R. 19-22-1, the carryover of funds from one campaign to a bonafide successor campaign is not a contribution and does not violate the Act. (Attachment 3) During the campaign for mayor, the opposition invoked a provision in the Wichita ordinance that sets a limit of \$500 maximum for a contribution for anyone running for mayor. In the lawsuit, the district court said that it was okay; but in a rehearing, told Mr. Mayans that he couldn't use the money. He then appealed this decision to the Court of Appeals which said that a \$500 contribution is allowed. Lastly, Mr. Mayans appealed to the Supreme Court, who decided that his case involved the Campaign Finance Act and that the transfer of funds was not proper, disagreeing with the Governmental Ethics Commission. The Supreme Court further recommended that the Legislature enact a clear definition of bona fide successor candidacy and outline a procedure on how the Governmental Ethics Commission will return funds to the original donors. (Attachment 4) Ken said the bill itself replaces Section 1 with the new Section 4, which is basically the Campaign Finance Act (Attachment 5) He indicated that the basic change in Section 2, the definition section, is in regards to the transfer of campaign funds to a bonafide successor committee or candidacy in accordance with K.S.A. 25-4157. Ken said there is another change in Section 2, a definition of "public office", but he said that the main change is in Section 3., the statute that pertains to the transfer of funds. On page 12 it adds lines 23-25; the provisions of this subsection shall not prohibit: "*a candidate or candidate committee from transferring campaign funds to a bona fide successor committee or candidacy established by the candidate*". He said this has been allowed through past practices. Ken told the committee that the termination of a campaign is dealt with on page 12, lines 33-43 and on the top of page 13, lines 1-2 "(5) *transferred to a bona fide successor committee or candidacy established by the candidate*" or (6) *transferred for the purpose of retiring the remaining debt to the original committee*". Lines 17-25 define a bona fide successor or candidate committee. He said that the biggest part is the new Section 4, lines 26-36 which ratifies any transfers that have been done since January 1, 1976 until the effective date of the act. Ken drew the committee's attention to the definition of "contributions" in K.S.A. 25-4143. (Attachment 6)

Appearing before the committee as a proponent for SB 376 was Carlos Mayans, Mayor of Wichita. He said that this bill clarifies that the transfer of funds to a bona fide successor committee or candidacy is not considered a contribution and provides the proper definition of the term "bona fide successor". Mayor

CONTINUATION SHEET

MINUTES OF THE HOUSE ETHICS AND ELECTIONS COMMITTEE at 3:30 p.m. on March 15, 2004 in Room 526-S of the Capitol.

Mayans indicated that the Ethics Commission was created to conduct the legislators' business in an ethical way and this bill supports the Ethics Commission. He told the committee another issue in his situation is intent; the Supreme Court did not know the intent of the legislature, even though the interpretation by the Ethics Commission has been working for 40 years. (Attachment 7) Mayor Mayans answered questions asked by committee members.

Carol Williams, Director of the Governmental Ethics Commission appeared before the committee as neutral on **SB 376**. She stated that since 1975 the Governmental Ethics Commissions had delivered 9 opinions in the last 28 years, permitting candidates to transfer funds from their current account to a successor campaign that that individual candidate chose to run for. Her estimate is that 60 candidates over the last 28 years have transferred funds from one candidacy to another. (Attachment 8) Ms. Williams answered question asked by committee members.

Kevin W. Anselmi, Crawford County Clerk, was opposed to **SB 376**. Mr. Anselmi said that he did not believe that monies meant for state-level elections should be allowed to be transferred back to county or city official elections. He also indicated that monies given by a person or persons should be given back to them or to the state party of the candidate. (Attachment 9)

Chairman Myers closed the hearing on **SB 376**. He said the committee would work the bill.

The chairman proposed amendments to **SB 376**. The first amendment would add another category to exemptions from reports by lobbyists to K.S.A. 49-269, Section 4. Added under Subsection (E) would be: "entertainment or hospitality in the form of recreation, food and beverages provided at a meeting, seminar or event organized by any national, nonprofit or nonpartisan organization for the purpose of serving, informing or educating and strengthening state legislatures and attended by legislators of other states when the presence of the legislator of this state at such meeting, seminar or event serves a legitimate state purpose or interest;" and adding a subsection (iii) under (E) "; or all members of a committee of the legislature or a committee of either house of the legislature". Representative Powers moved this amendment to **SB 376**. Representative Huff seconded the motion. The motion carried. (Attachment 10)

The second amendment proposed by Representative Myers would change the aggregate amount contributed to a candidate, candidate committee, party committee, political committee by any political committee or any person except a party committee, the candidate or the candidate's spouse for the office of member of the house of representatives, district judge, district magistrate judge, district attorney, member of the state board of education or a candidate for local office from \$500 to \$750 and for the office of state senator from \$1,000 to \$1,500 for each primary election and an equal amount for each general election in Section 3, K.S.A. 25-4153. Representative Yonally moved to amend **SB 376** with the amendment proposed by Representative Myers. Representative Powers seconded the motion. The motion carried. (Attachment 11)

Another amendment requested by Representative Myers would take the language from K.S.A. 25-4157a Section 3(e) and create a new Section 5 with it. Representative McLeland moved and Representative Huy seconded the motion to amend **SB 376** with the amendment requested by Representative Myers. The motion passed. (Attachment 12)

Representative Sawyer moved and the motion was seconded by Representative Gilbert to amend **SB 376** with Section 1, page 3, lines 20-22 "(I) Any report required by this section may be signed by the candidate in lieu of the candidate's treasurer or the treasurer of the candidate's committee" and also with lines 34 and 35 from that page: "Every report or statement shall be dated and signed by: (1) The treasurer or candidate for any report required by K.S.A. 25-4148" from **HB 2520**. The motion carried.

Representative Yonally moved that **SB 376** be drafted as House Substitute for **SB 376** as amended. Representative Sawyer seconded the motion. The motion passed. Representative Wilson was recorded as a "no" vote.

The meeting was adjourned at 5:20 p.m. The next scheduled meeting is March 17.

HOUSE ETHICS AND ELECTIONS COMMITTEE

GUEST LIST

DATE: March 15, 2004

Your Name	Representing
Brad Bryant	Sec. of state
Jesse Boyjon	Sec. of State
Kevin Anselmi	myself.
Mark Tomb	League of Kansas Municipalities

MEMORANDUM

To: House Committee on Ethics and Elections

From: Kenneth M. Wilke, Assistant Revisor and Martha Dorsey, Legislative Research

Date: March 15, 2004

Subject: Cole v. Mayans and Kenton, Kansas Supreme Court, 276 Kan. 866, Case No. 89.715 (December 15, 2003).

While the factual and procedural situations in this case are convoluted, the essential facts are:

1. Carlos Mayans transferred approximately \$50,000 of unused legislative campaign funds to his campaign for election to be Mayor of Wichita, Kansas.

2. Mr. Mayans obtained Opinion 2002-20 (dated July, 18, 2002) from the Kansas Governmental Ethics Commission (KGEC), which stated in part:

“Nothing in the Kansas Campaign Finance Act (ACT) prohibits a state legislator from using his existing campaign funds to run for a city office.”(Copy attached)

3. Mr. Mayans, through his attorney, obtained Opinion 2003-05 (dated February 20, 2003) from KGEC, which held that pursuant to K.A.R. 19-22-1, the carryover of funds from one campaign to a bonafide successor campaign is not a contribution and does not violate the ACT. (Copy attached)

The Court disagreed with the KGEC’s interpretation and held that the transfer of funds was not proper under the ACT. The Court states:

“We hold that the Campaign Finance Act and the related regulations, when coupled with the purpose for the Campaign Finance Act, must be construed to limit the transfer of campaign contributions from a candidate’s campaign account for a specific office to the same candidate’s campaign account for election to that same office. Thus, there are only two situations in which the transfer can be made. **The first is when an incumbent runs for reelection to the same office. The second is when a candidate loses an election for a specific office but seeks reelection to the same office in a subsequent election.**” (Opinion p.16) (Emphasis supplied) (Copy attached)

In addition, the Court “suggests” that the legislature should:

1. Enact a clear definition of “bona fide successor candidacy”; and
2. Require the KGEC to promulgate for the orderly return of contributions to donors who have contributed to a candidate for a specific office, but who do not wish to donate if the candidate chooses to run for a different office. (Opinion p.16)

In reaching its decision, the Court looked at K.S.A. 2003 Supp. 25-4143, K.S.A. 25-4157a and K.A.R. 19-22-1. (Copies are attached) **Essentially the Court found that the KGEC’s opinions allowing the transfer were not supported by the language contained in these statutes and regulation.**

The Court used a combination of statutory construction and administrative law reasoning. Syllabi 10 through 14 indicate how the Court reached its conclusion.

“10. K.S.A. 25-4157a(c) and K.A.R. 19-22-1 may be read together harmoniously to permit the transfer of campaign funds between candidacies when the candidate is running for reelection to the same office.

“11. The phrase "bona fide successor committee or candidacy" referred to in K.A.R. 19-22-1(a) includes an individual who is a candidate for reelection to the same office.

“12. The purpose of the Kansas Campaign Finance Act is to protect the public.

“13. The transfer from a legislative campaign account to a local election campaign account is a contribution, and the local election campaign account is not a bona fide successor committee or candidacy under K.A.R. 19-22-1.

“14. K.S.A. 25-4157a(c) prohibits the transfer of contributions between candidacies.” (Opinion p. 2)

Ramifications:

1. This decision overturns a longstanding policy and practice of the KGEC.
2. The Court’s language regarding usage of campaign funds only for election (reelection) to “the same office” can be construed narrowly to create hardships when one’s legislative district is reapportioned.; e.g, the district no longer bears the same number or the district longer encompasses the same territory.

July 18, 2002

Opinion No. 2002-20

The Honorable Carlos Mayans
Kansas State Representative, 100th District
1842 N. Valleyview
Wichita, Kansas 67212

Dear Representative Mayans:

This opinion is in response to your letter of July 3, 2002, in which you request an opinion from the Kansas Governmental Ethics Commission concerning the Campaign Finance Act (K.S.A. 25-4142 *et seq.*). We note at the outset that the Commission's jurisdiction concerning your question is limited to the application of K.S.A. 25-4142 *et seq.* Thus, whether some other statutory system, common law theory or agency rule or regulation applies to your inquiry is not covered by this opinion.

FACTUAL STATEMENT:

We understand that you request this opinion in your capacity as an incumbent state legislator. You advise us that you may want to run for an elected position as the Mayor of Wichita. You further advise us that you would like to use your existing legislative campaign funds for this election. You note that the City of Wichita has passed Ordinance Number 44-852 which prohibits certain campaign contributions to candidates.

QUESTION:

May a state legislator use his State Representative Candidate Committee campaign funds to run for the Mayor of Wichita, pursuant to the Kansas Campaign Finance Act?

OPINION:

Nothing in the Kansas Campaign Finance Act prohibits a state legislator from using his existing campaign funds to run for a city office. See K.A.R. 19-22-1 and Commission Opinion 1997-17. You question the application of Wichita Ordinance Number 44-852

House Ethics and Elections
3-15-04
Attachment 2

This Commission is not in a position to address this issue, as Wichita ordinances are not within our jurisdiction.

Sincerely,

Daniel Severt, Chairman
By Direction of the Commission

DS:VMG:dlw

February 20, 2003

Opinion No. 2003-05

Richard A. Olmstead
Husch & Eppenberger, LLC
Epic Center
301 North Main Street, Suite 600
Wichita, Kansas 67202

Dear Mr. Olmstead:

This opinion is in response to your letter of February 11, 2003, in which you request an opinion from the Kansas Governmental Ethics Commission concerning the Campaign Finance Act (K.S.A. 25-4142 *et seq.*). We note at the outset that the Commission's jurisdiction concerning your question is limited to the application of K.S.A. 25-4142 *et seq.* Thus, whether some other statutory system, common law theory or agency rule or regulation applies to your inquiry is not covered by this opinion.

FACTUAL STATEMENT:

We understand that you request this opinion on behalf of former state legislator Carlos Mayans who is currently a candidate for Mayor of Wichita. You have explained that on August 15, 2002, with the intent of starting a bona fide successor campaign, Mr. Mayans transferred \$50,000 from his Legislative campaign fund (Legislative Fund) to his Mayoral campaign fund (Mayoral Fund). This left his Legislative Fund with a balance of approximately \$22,000. Mr. Mayans then made expenditures out of the Legislative Fund for legislative expenses in the amount of \$3,410.19 and attorney fees in the amount of \$11,751.99 related to questions surrounding his ability to use campaign funds from his Legislative Fund in his Mayoral campaign. On December 31, 2002, Mr. Mayans closed the Legislative Fund and transferred the remaining balance of \$6,060.51 to his Mayoral Fund.

After contacting the Commission, Mr. Mayans learned that for his Mayoral Fund to be treated as a bona fide successor candidate pursuant to K.A.R. 19-22-1, he should have transferred the entire balance and closed his Legislative Fund on August 15, 2002. To cure this mistake, Mr. Mayans reimbur

House Ethics and Elections
3-15-04
Attachment 3

with his own personal funds in the amount of \$3,410.19. He did not reimburse the Mayoral Fund for the \$11,751.99 in professional services rendered, because, after consulting with the Commission's staff, he believed this expense was a legitimate campaign expenditure for his mayoral campaign. As a result of these actions, Mr. Mayans believes that since August 15, 2002 all funds in his Legislative Fund have been either transferred to or used for the funding of his mayoral campaign which would then constitute a bona fide successor campaign.

QUESTIONS:

1. Does the Kansas Campaign Finance Act prohibit a former State legislator from transferring funds from his Legislative campaign fund to his Mayoral campaign fund?
2. Based on the facts stated above, is Mr. Mayans' Mayoral campaign a "bona fide successor committee or candidacy" as contemplated by the Commission in K.A.R. 19-22-1?
3. Does the transfer of funds by a candidate from one candidacy to a bona fide successor candidacy constitute a "contribution" for purposes of K.S.A. 25-4143(e)(1) and K.S.A. 25-4157a(c)?

OPINION:

Several statutes and regulations must be addressed in order to completely answer your questions. K.S.A. 25-4143(e) provides the definition of a contribution. It states in pertinent part:

"(1) 'Contribution' means:

...
"(C) a transfer of funds between any two or more candidate committees, party committees or political committees;

K.S.A. 25-4157a(c) provides:

"No candidate or candidate committee shall accept from any other candidate or candidate committee for any candidate for local, state or national office, any moneys received by such candidate or candidate committee as a campaign contribution."

K.A.R. 19-22-1 states in pertinent part:

“ . . . the carryover of funds or inventory by a candidate . . . from one election period to another or the transfer thereof to a bona fide successor . . . candidacy does not constitute a contribution.”

When a candidate for one office chooses to run for a different or additional office, he may do one of two things with his campaign funds:

1. Pursuant to K.A.R. 19-22-1, he may “carryover” the remaining balance of campaign funds from the first campaign account into a new campaign account for the second office sought. If the transfer is performed in this manner, the second office sought is considered a “successor candidacy.”
2. Or, he may choose to retain the first campaign account (to be used for the expenses of holding the first public office and legitimate campaign purposes related to a campaign for the first office and eventually if the candidate chooses to close that account, distribute the funds pursuant to K.S.A. 25-4157a(d)) and also open a new campaign account for the second office sought with campaign funds solicited specifically for that second office. Pursuant to K.S.A.25-4157a©), however, if he chooses to retain the first account, he may not transfer any of the money from his first campaign fund to his second campaign fund because they are considered separate candidacies.

Therefore, with respect to your first question, so long as a candidate carries over the remaining balance of his first campaign fund to a bona fide successor campaign, the Campaign Finance Act does not prohibit the transfer. If, however, the candidate chooses to retain the first account, K.S.A.25-4157a©) prohibits the transfer of campaign funds between the two accounts.

With respect to your second question, although Mr. Mayans erred in not transferring all of his Legislative Fund at the time he originally opened the Mayoral Fund, he has corrected this mistake by reimbursing his Mayoral Fund for the Legislative expenditures. Because Mr. Mayans intended his mayoral campaign to be a successor campaign to his legislative campaign, and because all of the remaining money in the Legislative Fund was either transferred to or used for expenses related to the Mayoral campaign, the Commission considers the Mayoral campaign to be a bona fide successor candidacy

With respect to your third question, K.A.R. 19-22-1 specifically provides that the “carryover of funds or inventory by a candidate . . . or the transfer thereof to a bona fide successor . . . candidacy does not constitute a contribution.” This regulation has been in effect since 1975 and the Commission has been issuing opinions to this effect since 1976. See e.g. Commission Opinions 1976-03, 1997-03, 1997-16, 2002-09, 2002-20. It should be noted that the Legislature is well aware of the Commission’s interpretation, as each election year the Commission’s staff provides literature and other information to members of the Legislature which indicates that they may carryover their campaign funds from one campaign to another. Therefore, pursuant to K.A.R. 19-22-1, the carryover of funds from one campaign to a bona fide successor campaign is not a contribution, and does not violate the Campaign Finance Act.

Sincerely,

Daniel Severt, Chairman
By Direction of the Commission

DS:VMG:dlw

No. 89,715

IN THE SUPREME COURT OF THE STATE OF KANSAS

JOAN COLE,

Appellant,

v.

CARLOS MAYANS and WINSTON KENTON,

Appellees.

SYLLABUS BY THE COURT

1. An appellate court has a duty to question jurisdiction on its own initiative. If the record shows a lack of jurisdiction for the appeal, the appeal must be dismissed.

2. K.S.A. 77-612 requires the exhaustion of administrative remedies before a party can seek review under the Act for Judicial Review and Civil Enforcement of Agency Actions.

3. Generally, an agency should be given the first opportunity to exercise its discretion or special expertise. When an administrative remedy is provided by statute, such a remedy must ordinarily be exhausted before a party can bring the matter before the courts. However, if no agency remedy is available or when it is inadequate, exhaustion is not required.

4. Under the facts of this case, the City's campaign finance ordinances do not establish a procedure for addressing violations of the ordinances. Without such a remedy, exhaustion of administrative remedies is not required to bring an appeal.

5. K.S.A. 60-901 *et seq.* does not limit who may bring a cause of action for an injunction.

6. Generally, parties may not raise a new issue on appeal. However, an appellate court may review a new issue if required to serve the ends of justice.

7. Although an appellate court gives deference to an agency's interpretation of a statute, the final construction of the statute lies with the appellate court, and the agency's interpretation, while persuasive, is not binding on the court.

8. The fundamental rule for statutory construction is that the intent of the legislature governs if that intent can be determined. The legislature is presumed to have expressed its intent through the language in the statutory scheme. When a statute is plain and unambiguous, the court must give effect to the legislative intent as it was expressed rather than determine what the law should or should not be. Courts, however, are not limited to examining the language of the statute alone but may also consider the causes that impel the statute's adoption, the statute's objective, the historical background, and the effect of the statute under various constructions.

9. When construing a statute, in addition to considering the language and the circumstances surrounding the enactment of the statute, an appellate court must consider the various provisions of the act together with a view of reconciling and harmonizing the provisions, if possible. As a general rule, statutes should be interpreted to avoid unreasonable results.

10. K.S.A. 25-4157a(c) and K.A.R. 19-22-1 may be read together harmoniously to permit the transfer of campaign funds between candidacies when the candidate is running for reelection to the same office.

11. The phrase "bona fide successor committee or candidacy" referred to in K.A.R. 19-22-1(a) includes an individual who is a candidate for reelection to the same office.

12. The purpose of the Kansas Campaign Finance Act is to protect the public.

13. The transfer from a legislative campaign account to a local election campaign account is a contribution, and the local election campaign account is not a bona fide successor committee or candidacy under K.A.R. 19-22-1.

14. K.S.A. 25-4157a(c) prohibits the transfer of contributions between candidacies.

Review of the judgment of the Court of Appeals in an unpublished decision filed January 31, 2003. Appeal from Sedgwick district court; PAUL BUCHANAN, judge. Judgment of the Court of Appeals reversing and remanding with directions is affirmed in part and reversed in part. Judgment of the district court is reversed.

Opinion filed December 12, 2003.

Kelly W. Johnston, of The Johnston Law Offices, P.A., of Wichita, argued the cause and was on the briefs for appellant.

Richard A. Olmstead, of Husch & Eppenberger, LLC, of Wichita, argued the cause, and *Alan L. Rupe*, of the same firm, and *Richard A. Macias*, of Wichita, were with him on the briefs for appellees.

Vera May Gannaway, general counsel, was on the brief for *amicus curiae* Kansas Governmental Ethics Commission.

The opinion of the court was delivered by

GERNON, J.: This appeal requires us to interpret the Kansas Campaign Finance Act, K.S.A. 25-4142 *et seq.*, and decide whether the Act controls over local ordinances designed to limit campaign contributions and whether the transfer of campaign funds from one office to another office is permissible.

We granted a petition for review from an unpublished decision of the Court of Appeals filed January 31, 2003, which held that Carlos Mayans could transfer funds from his legislative campaign committee to the campaign committee for his candidacy for the office of mayor of the City of Wichita. Mayans, a state legislator since 1992, had accumulated campaign contributions in excess of \$50,000 in his legislative campaign account. In 2002, he declined to run for reelection to his state legislative office and chose to run in the Wichita mayoral race. The Court of Appeals ruled, however, that any such transfer was limited to \$500, in accordance with Wichita campaign finance ordinances. See Wichita City Code 2.56.010 and 2.56.030 (2001).

In addition to the briefs of the parties, the Kansas Governmental Ethics Commission filed an *amicus curiae* brief.

Prior to depositing the money from his legislative campaign account into his mayoral campaign account, Mayans sought approval for the transaction from the Governmental Ethics Commission (Commission). The Commission advised Mayans that the Kansas Campaign Finance Act did not prohibit the use of his legislative campaign funds in his mayoral campaign but noted that it did not have jurisdiction over Wichita campaign ordinances.

Mayans sought approval from the City of Wichita. The Wichita city attorney

advised Mayans that the Wichita campaign finance ordinances did not prohibit the use of legislative campaign funds in a local election. It is the approval of the transfer of these funds which is the focus of our attention here.

Joan Cole, also a candidate for mayor of Wichita, filed a petition in the Sedgwick County District Court seeking a temporary and permanent injunction, alleging that Mayans' contribution from his legislative campaign account violated Wichita campaign finance ordinances. On the same day, the district court issued an ex parte temporary injunction, prohibiting Mayans from using his legislative campaign funds in his Wichita mayoral campaign.

Mayans filed a motion to dismiss Cole's petition. Following a hearing, the district court granted Mayans' motion to dismiss, and Cole appealed to the Court of Appeals.

After receiving the Court of Appeals' decision, Mayans requested another ruling from the Commission regarding whether his mayoral campaign was a bona fide successor candidacy and whether the transfer from his legislative campaign account to his mayoral campaign account was a contribution. The Commission advised Mayans that his mayoral campaign was a bona fide successor candidacy and his transfer of funds was not a contribution under the Campaign Finance Act.

Whatever Mayans sought to do after the Court of Appeals decision is not relevant to this appeal. In addition, whatever ruling the Commission made to the late request by Mayans is not part of the record on appeal.

EXHAUSTION OF REMEDIES

As a preliminary matter, we must consider Mayans' contention that Cole failed to exhaust her administrative remedies. This issue is a question of law over which we have unlimited review. *NEA-Coffeyville v. U.S.D. No. 445*, 268 Kan. 384, 387, 996 P.2d 821 (2000).

Generally, an agency should be given the first opportunity to exercise its discretion or special expertise. When an administrative remedy is provided by statute, such a remedy must ordinarily be exhausted before a party can bring the matter before the courts. However, if no agency remedy is available or when it is inadequate, exhaustion is not required. 268 Kan. at 389.

Mayans argues that Cole lacked standing to bring an action in the district court. Mayans relies on the provisions in the Campaign Finance Act that require

individuals to file complaints with the Commission but authorize the Commission to bring an action in court. See K.S.A. 25-4160; K.S.A. 25-4183.

Cole, on the other hand, argues that Mayans should not be allowed to raise a new defense on appeal. Her argument, however, ignores the necessity of jurisdiction which no court would have if administrative remedies are not exhausted. An appellate court has a duty to question jurisdiction on its own initiative. If the record shows a lack of jurisdiction for the appeal, the appeal must be dismissed. *State v. Verge*, 272 Kan. 501, 521, 34 P.3d 449 (2001).

K.S.A. 77-612 requires the exhaustion of administrative remedies before a party can seek review under the Act for Judicial Review and Civil Enforcement of Agency Actions, K.S.A. 77-601 *et seq.* Thus, this court's jurisdiction may be dependant on whether Cole exhausted her administrative remedies.

In her petition, Cole alleges a violation of the Wichita city ordinances, not the Campaign Finance Act. Before the district court, Cole limited her argument to the application of the Wichita campaign finance ordinances. She argued that the ordinances limited campaign contributions to adult human beings and that Mayans' legislative campaign account was not an adult human being.

In the district court, both parties addressed the application of the Wichita ordinances, not the Campaign Finance Act, and both parties referred to the money from Mayans' legislative campaign account as a contribution. Neither party raised the issue of the application of the Campaign Finance Act or the need for Cole to exhaust her administrative remedies. Likewise, the district court did not address the application of the Campaign Finance Act but limited its ruling to an interpretation of the Wichita ordinance.

Like the district court, the Court of Appeals based its decision on an interpretation of Wichita City Ordinance 2.56.030. The posture of this case has shifted from a violation of ordinance 2.56.030, which limits the amount of contributions, to an examination of the Kansas Campaign Finance Act and its related regulations. Mayans argues for the first time in this appeal that the transfer of funds from his legislative campaign account to his mayoral campaign is not a contribution. Consequently, we will review the issue of whether Cole failed to exhaust her administrative remedies by considering the case as it was originally presented to the district court.

Because the Commission does not have jurisdiction over Wichita ordinances, Cole

could not have proceeded by filing a complaint with the Commission. Unlike the Campaign Finance Act, the Wichita ordinances do not specify the procedure to be used when someone believes the ordinances are not being followed. The Wichita campaign finance ordinances neither establish an agency or body to review concerns about the application of the ordinances nor limit who can bring a cause of action. When there is no agency remedy available, exhaustion is not required. *NEA-Coffeyville*, 268 Kan. at 389. Thus, this court's jurisdiction is not dependant on whether Cole exhausted her administrative remedies before filing her cause of action in the district court because she had no administrative remedies available under the Wichita campaign finance ordinances.

Mayans also argues that Cole lacked standing to bring a cause of action under the Wichita ordinances. He claims that the penalty for violating the ordinances is prosecution for a misdemeanor and that the Sedgwick County district attorney or the Wichita city attorney are the only parties who can bring such a cause of action. Mayans cites several cases for the proposition that private citizens cannot sue to protect the interests of the general public. These cases, however, are not on point. Cole brought a cause of action because she was also a candidate in the mayoral race and Mayans' use of campaign funds directly affected her mayoral campaign. She was not bringing a cause of action to protect the general public. Her cause of action was directed at protecting her own interests as a candidate for mayor.

Mayans' argument also fails to recognize the remedy requested by Cole. She sought an injunction to prohibit the use of his legislative campaign funds. She did not seek criminal penalties or fines against Mayans.

K.S.A. 60-901 *et seq.* does not limit who may bring a cause of action for an injunction, and Mayans has failed to direct the court to any other law limiting Cole's right to petition for an injunction. As a result, his claim that Cole lacked standing to file a petition for an injunction based on the Wichita campaign finance ordinances is without merit.

CAMPAIGN FINANCE ACT

The Kansas Campaign Finance Act, K.S.A. 25-4142 *et seq.*, is a logical starting point for a discussion of the issues involved in this case. We begin by outlining the relevant sections of that Act.

The following provisions of K.S.A. 2002 Supp. 25-4143 are relevant to our discussion:

"(a) 'Candidate' means an individual who: (1) Appoints a treasurer or a candidate committee;

(2) makes a public announcement of intention to seek nomination or election to state or local office;

(3) makes any expenditure or accepts any contribution for such person's nomination or election to any state or local office; or

(4) files a declaration or petition to become a candidate for state or local office.

"(b) 'Candidate committee' means a committee appointed by a candidate to receive contributions and make expenditures for the candidate.

"(c) 'Clearly identified candidate' means candidate who has been identified by the:

(1) Use of the name of the candidate;

(2) use of a photograph or drawing of the candidate; or

(3) unambiguous reference to the candidate whether or not the name, photograph or drawing of such candidate is used.

....

"(e)(1) 'Contribution' means:

(A) Any advance, conveyance, deposit, distribution, gift, loan or payment of money or any other thing of value given to a candidate, candidate committee, party committee or political committee for the express purpose of nominating, electing or defeating a clearly identified candidate for a state or local office.

(B) Any advance, conveyance, deposit, distribution, gift, loan or payment of money or any other thing of value made to expressly advocate the nomination, election or defeat of a clearly identified candidate for a state or local office;

(C) a transfer of funds between any two or more candidate committees, party committees or political committees.

....

"(g)(1) 'Expenditure' means:

....

(D) a transfer of funds between any two or more candidate committees, party committees or political committees."

MAYANS' ARGUMENT

Mayans now contends, for the first time, that the transfer of funds from his legislative campaign committee to his mayoral campaign committee was not a contribution. We note that in the district court and in the Court of Appeals, Mayans' position was that this transfer was a contribution. He thus raises a new legal theory for the first time on appeal.

Generally, parties may not raise a new legal theory for the first time on appeal. *Jarboe v. Board of Sedgwick County Comms*, 262 Kan. 615, 622, 938 P.2d 1293 (1997). In *Jarboe*, this court recognized three exceptions to the general rule:

""(1) Cases where the newly asserted theory involves only a question of law arising on proved or admitted facts and which is finally determinative of the case;

""(2) Questions raised for the first time on appeal if consideration of the same is necessary to serve the ends of justice or to prevent denial of fundamental rights; and

""(3) That a judgment of a trial court may be upheld on appeal even though that court may have relied on the wrong ground or assigned a wrong reason for its decision." [Citation omitted.]" 262 Kan. at 622-23.

We will review Mayans' claims because consideration of the issue is necessary to serve the ends of justice.

Mayans' contention is, and the Commission agrees, that the Campaign Finance Act and the related Kansas Administrative Regulations do not consider the transfer of funds between different and diverse campaign committees to be a contribution.

Resolution of this issue requires the interpretation of the Campaign Finance Act and the related administrative regulations. Generally, administrative regulations have the force and effect of statutes. *Jones v. The Grain Club*, 227 Kan. 148, 150, 605 P.2d 142 (1980). The interpretation of a statute is a question of law, and this court exercises de novo review. *Matjasich v. Kansas Dept. of Human Resources*

271 Kan. 246, 250-51, 21 P.3d 985 (2001).

In *Matjasich*, we stated: "Although an appellate court gives deference to the agency's interpretation of a statute, the final construction of a statute lies with the appellate court, and the agency's interpretation, while persuasive, is not binding on the court." 271 Kan. at 250.

The fundamental rule for statutory construction is that the intent of the legislature governs if that intent can be determined. The legislature is presumed to have expressed its intent through the language in the statutory scheme. When a statute is plain and unambiguous, the court must give effect to the legislative intent as it was expressed rather than determine what the law should or should not be. *Williamson v. City of Hays*, 275 Kan. 300, 305, 64 P.3d 364 (2003). Courts, however, are not limited to examining the language of the statute alone but may also consider the causes that impel the statute's adoption, the statute's objective, the historical background, and the effect of the statute under various constructions. *Bell v. Simon*, 246 Kan. 473, 476, 790 P.2d 925 (1990). In addition to considering the language and the circumstances surrounding the enactment of the statute, this court must consider the various provisions of an act together with a view of reconciling and harmonizing the provisions if possible. See *KPERS v. Reimer & Koger Assocs., Inc.*, 262 Kan. 635, 643-44, 941 P.2d 1321 (1997). As a general rule, statutes should be interpreted to avoid unreasonable results *In re M.R.*, 272 Kan. 1335, 1342, 38 P.3d 694 (2002).

Mayans contends that K.A.R. 19-22-1 supports his position that the transfer of funds from his legislative campaign account to his mayoral campaign account is not a contribution.

K.A.R. 19-22-1(a) provides in part:

"[T]he carryover of funds or inventory by a candidate, candidate committee, party committee or political committee from one election period to another or the transfer thereof to a *bona fide successor committee or candidacy* does not constitute a contribution." (Emphasis added.)

K.A.R. 19-22-1(b), however, provides:

"Transfer of funds. Except as provided in subsection (a), the transfer of funds between any two (2) or more candidates, candidate committees, party committees or political committees constitutes a contribution made to the recipient."

Our focus is drawn to the phrase "bona fide successor committee or candidacy" in K.A.R. 19-22-1(a). Neither the Campaign Finance Act nor the regulations define "bona fide successor committee or candidacy."

The Commission has previously interpreted the phrase to include transfers from legislative campaign accounts to local campaign accounts. For the reasons stated below, we disagree with such an interpretation.

Mayans and the Commission argue that the transfer from Mayans' legislative campaign to his mayoral campaign must be a transfer to a bona fide successor candidacy because a contribution is prohibited by K.S.A. 25-4157a(c) ("No candidate or candidate committee shall accept from any other candidate or candidate committee for any candidate for local, state or national office, any moneys received by such candidate or candidate committee as a campaign contribution.").

The Commission further argues that K.S.A. 25-4157a does not specifically render K.A.R. 19-22-1 invalid, so the regulation must be interpreted to permit the transfer Mayans made. The Commission, however, fails to offer any authority for the proposition that a statute must specifically repeal a regulation in order to invalidate the regulation. We are unable to find any authority for that proposition.

In *Kansas Commission on Civil Rights v. City of Topeka Street Department*, 212 Kan. 398, 402, 511 P.2d 253, *cert. denied* 414 U.S. 1066 (1973), this court noted:

"The power to adopt rules and regulations is administrative in nature, not legislative, and to be valid, must be within the authority conferred. An administrative rule and regulation which goes beyond that which the legislature has authorized, which is out of harmony with or violates the statute, or which alters, extends, limits or attempts to breathe life into the source of its legislative power, is said to be void." (Quoting *State, ex rel., v. Columbia Pictures Corporation*, 197 Kan. 448, 454, 417 P.2d 255 [1966].)

We note that K.S.A. 25-4157a(c) was added to the Campaign Finance Act in 1991. L. 1991, ch. 150, sec. 12. Prior to the addition of subsection (c), the only direction given to candidates who chose to close out their campaign accounts was that such funds could not be used by the candidate personally. See K.S.A. 25-4157a(a).

The result was that many candidates contributed the money in their campaign

accounts to candidates for other public offices. The legislature ended the practice of contributing to other candidates by establishing specific and limited depositories for such residual funds from a terminated campaign account. See K.S.A. 25-4157c(d)

The legislative intent, as determined by a plain reading of the statute, leads us to conclude that K.S.A. 25-4157a does not prohibit the use of campaign accounts for reelection, but it does prohibit the transfer of campaign funds between different candidacies. Thus, the question remains, may those funds be transferred to the same individual who is running for a different office? Mayans and the Commission argue that if the transfer between candidacies is a contribution, then K.S.A. 25-4157a(c) prohibits candidates from using their campaign accounts for reelection.

We conclude that K.S.A. 25-4157a(c) and K.A.R. 19-22-1 may be read together harmoniously to permit the transfer of campaign funds between candidacies when the candidate is running for reelection to the same office. We interpret the phrase "bona fide successor committee or candidacy" in K.A.R. 19-22-1(a) to include an individual who is a candidate for reelection to the same office.

This interpretation of the statute and the regulation comports with public policy and this court's determination that the purpose of the Campaign Finance Act is to protect the public. See *Nichols v. Kansas Political Action Committee*, 270 Kan. 37, 51, 11 P.3d 1134 (2000).

This goal is enunciated in K.A.R. 19-20-3, which states that the provisions of the Kansas Administrative Regulations relating to the Campaign Finance Act "shall be liberally construed to accomplish the purposes of the act including the administration of fair and open elections."

Those individuals serving in statewide offices and members of the legislature whose every act has a statewide impact receive contributions from many sources, including individuals, corporations, and special interest groups whose interests and concerns are statewide. Such contributors may not have any interest in local government issues or policies and, currently, are not given the option to withdraw their contributions for a candidate who may be seeking to transfer such funds to a local office or an office the contributors have no interest in whatsoever.

In addition, a candidate for a statewide office or the legislature will potentially have a large pool of contributors, including special interest groups, corporations,

business entities, and political action committees, which may allow that candidate to accumulate a large campaign account. To allow such a candidate to transfer a large sum of money to a local campaign runs contrary to the goal of promoting "fair and open elections" in K.A.R. 19-20-3, and such a transfer potentially would give that candidate a decidedly unfair advantage in a local campaign.

Contributors to Mayans' legislative campaign funds came from many diverse sources, including political action committees and corporations. With contributions from these sources, Mayans accumulated over \$50,000 in his legislative campaign account. Other candidates for the Wichita mayoral campaign were prohibited by the Wichita campaign finance ordinances from receiving contributions from any political action committee or corporation, and all contributions were limited to \$500. By transferring the funds from his legislative campaign account, Mayans could effectively undermine the Wichita campaign finance ordinances and clearly frustrate the Wichita city ordinances and the Campaign Finance Act's goal of fair and open elections. We conclude that an interpretation of K.A.R. 19-22-1(a) allowing such transfers would place statewide or legislative office candidates in a special category and grant them a privilege that usurps local authority to enact more restrictive campaign finance laws in violation of the home rule provision of the Kansas Constitution. See Kan. Const. Art. 12, § 5(c)(1), which states:

"Any city may by charter ordinance elect in the manner prescribed by this section that the whole or any part of any enactment of the legislature applying to such city, other than enactments of statewide concern applicable uniformly to all cities, and enactments prescribing limits of indebtedness, shall not apply to such city."

The plain language of 25-4143 also supports the Court of Appeals' conclusion that a transfer from a legislative campaign to a mayoral campaign is a contribution. K.S.A. 2002 Supp. 25-4143(e)(1)(C) defines "contribution" to specifically include the transfer of funds between candidacies. Likewise, K.S.A. 2002 Supp. 25-4143(e)(2) specifically excludes four items from the definition of "contribution." The transfer of the funds between candidacies is not included in the specific list of excluded items.

When an item is not included in a specific list, this court can presume that the legislature intended to exclude the item by applying the maxim of *expressio unius est exclusio alterius*, i.e., the inclusion of one thing implies the exclusion of another. *In re Marriage of Killman*, 264 Kan. 33, 42, 955 P.2d 1228 (1998).

We further conclude that the attempted transfer from the Mayans' legislative campaign account to his mayoral campaign account is a contribution and that his mayoral campaign account is not a bona fide successor committee or candidacy. Using the same maxim, *expressio unius est exclusio alterius*, this court concludes that had the legislature intended that such a transfer be allowed, it could have specifically so stated. Absent such specificity, we find nothing in the Campaign Finance Act or in the regulations relating thereto which authorizes such a transfer or contribution under the facts before us.

The Commission opines that the plain language of K.S.A. 2002 Supp. 25-4143(e)(1)(C) defining contribution does not include the transfer between Mayans' legislative campaign account and his mayoral campaign account because the statute specifically states that such transfers must be made between *candidate committees* and Mayans' mayoral campaign account is not a candidate committee.

A "candidate committee," as defined by K.S.A. 2002 Supp. 25-4143(b), is "a committee appointed by a candidate to receive contributions and make expenditures for the candidate." The Commission appears to differentiate between candidacies based on the form of the campaign organization. Under the Commission's interpretation of K.S.A. 2002 Supp. 25-4143(e)(1)(C), Mayans could transfer the money if he used a treasurer rather than a candidate committee to administrate the financial aspects of his campaign. However, according to the Commission, if Mayans had named a campaign committee rather than a treasurer, he would have been precluded from transferring the funds. K.S.A. 2002 Supp. 25-4143(e)(1)(C) states that a contribution means: "a transfer of funds between any two or more candidate committees, party committees or political committees." Such a position seems to suggest form over substance and begs the question "Treasurer for what?" The obvious answer is treasurer for the candidate or candidate committee seeking election to a different office from the one to which the contributions were originally made. See K.S.A. 2002 Supp. 25-4143(o) (definition of treasurer). The Commission essentially argues a distinction without a difference. This distinction is invalidated by K.S.A. 25-4146(b) which requires all contributions and expenditures to go through a treasurer.

The Commission further asserts in its *amicus* brief that the legislature included the term "candidate" in K.S.A. 2002 Supp. 25-4143(e)(1)(A) and (D), so it must have specifically intended to leave the term "candidate" out of K.S.A. 2002 Supp. 25-4143(e)(1)(C), where it only referred to candidate committees. This argument overlooks the application of other subsections.

K.S.A. 2002 Supp. 25-4143(e)(1)(A) provides that "contribution" means

"[a]ny advance, conveyance, deposit, distribution, gift, loan or payment of money or any other thing of value given to a *candidate*, candidate committee, party committee or political committee for the express purpose of nominating, electing or defeating a clearly identified candidate for a state or local office." (Emphasis added.)

This subsection recognizes that donors may contribute to a candidate personally without giving to the candidate's campaign fund. For example, a donor could offer to pay a candidate's financial obligations while the candidate was campaigning, so the candidate would not have to work during the campaign. Because the language in subsection (e)(1)(A) includes the term "candidate" in the list of recipients, this type of donation would be considered a contribution subject to the statutory limitations placed on contributions. The subsection prevents candidates from personally receiving donations outside the Campaign Finance Act.

K.S.A. 2002 Supp. 25-4143(e)(1)(D) provides that "contribution" means

"the payment, by any person other than a *candidate*, candidate committee, party committee or political committee, of compensation to an individual for the personal services rendered without charge to or for a candidate's campaign or to or for any such committee." (Emphasis added.)

By including the term "candidate" in this subsection, the legislature chose to exclude the candidate's personal payments from the definition of "contribution" under subsection (e)(1)(D).

In contrast, K.S.A. 2002 Supp. 25-4143(e)(1)(C) provides that a contribution is "a transfer of funds between any two or more candidate committees, party committees or political committees." The word candidate is not necessary in this subsection because transfers to candidates themselves are prohibited by the Campaign Finance Act. K.S.A. 25-4157a(a) provides that "[n]o moneys received by any candidate or candidate committee of any candidate as a contribution under this act shall be used or be made available for the personal use of the candidate." Thus, transfers must be made to the candidate's campaign treasury, whether that treasury is administered by a one-person treasurer or a committee of more than one person.

Mayans and the Commission also argue that this court should defer to the

Commission's previous decisions regarding the transfer of funds from state level campaign accounts to local level campaign accounts because the Commission is an agency of "special competence and experience." In support of this proposition, the Commission cites *Kansas Bd. of Regents v. Pittsburg State Univ. Chap. of K-NEA*, 233 Kan. 801, 810, 667 P.2d 306 (1983).

As stated by this court in *Matjasich v. Kansas Dept. of Human Resources*, 271 Kan. 246, 250-51, 21 P.3d 985 (2001):

"[T]he interpretation of a statute by an administrative agency charged with the responsibility of enforcing the statute is entitled to judicial deference and is called the doctrine of operative construction. Deference to an agency's interpretation is particularly appropriate when the agency is one of special competence and experience. [Citation omitted.]

". . . Interpretation of a statute is a question of law over which an appellate court's review is unlimited. [Citation omitted.]"

As further stated by this court in the *Kansas Bd. of Regents* case cited by the Commission: "If, however, the reviewing court finds that the administrative body's interpretation is erroneous as a matter of law, the court should take corrective steps; the determination of an administrative body on questions of law is not conclusive, and, while persuasive, is not binding on the courts. [Citations omitted.]" 233 Kan. at 810.

The Commission's interpretation of K.S.A. 2002 Supp. 25-4143(e) unreasonably distinguishes between candidates based upon the organizational structure of the campaign and does not harmonize the various provisions of the Campaign Finance Act and its administrative regulations. In this instance, such an interpretation does not comport with the stated goal of the regulations relating to the Campaign Finance Act of promoting "fair and open elections."

The task of this court is to harmonize the statutes and regulations while avoiding unreasonable results. See *In re M.R.*, 272 Kan. 1335, 1342, 38 P.3d 694 (2002); *KPERS v. Reimer & Koger Assocs., Inc.*, 262 Kan. 635, 643-44, 941 P.2d 1321 (1997).

We conclude, therefore, that the Commission's interpretation of K.S.A. 2002 Supp. 25-4143(e), which attempted to limit the definition of "contribution" by distinguishing between candidacies based on whether they have a treasurer or a

candidate committee controlling the finances, should be rejected.

The Court of Appeals correctly determined that the transfer of funds between Mayans' legislative campaign account to his mayoral account was a contribution. However, the Court of Appeals failed to consider the impact of K.S.A. 25-4157a(c), which specifically prohibits contributions between candidacies. Pursuant to Wichita City Ordinance 2.56.010 (2001), the Campaign Finance Act applies unless the Wichita ordinances are more restrictive. In this case, the Campaign Finance Act is more restrictive. Consequently, the portion of the Court of Appeals' opinion that permits the transfer of \$500 to Mayans' mayoral account must be reversed.

We hold that the Campaign Finance Act and the related regulations, when coupled with the purpose for the Campaign Finance Act, must be construed to limit the transfer of campaign contributions from a candidate's campaign account for a specific office to the same candidate's campaign account for election to that same office. Thus, there are only two situations in which the transfer can be made. The first is when an incumbent runs for reelection to the same office. The second is when a candidate loses an election for a specific office but seeks election to the same office in a subsequent election.

The goal of promoting fair and open elections can best be served by a legislative enactment clearly defining a "bona fide successor candidacy." Further, a legislative enactment should require the Commission to promulgate rules and regulations for the orderly return of contributions to donors who have contributed to a candidate for a specific office but do not want to contribute to the same candidate if he or she decides to run for a different office. Such regulations would bring to the election process a sense of fundamental fairness by prohibiting statewide or legislative office candidates from accumulating tens of thousands of dollars and transferring those contributions to a candidacy for a local office. Allowing the transfer of a large war chest of contributions to a local election encourages politicians to "buy" another office. In our view, this type of transfer does not comport with the current statutory language and administrative regulations, nor does it meet the overall goal of fair and open elections.

The decision of the Court of Appeals is affirmed in part and reversed in part. The decision of the district court is reversed.

BEIER, J., not participating.

WAHL, S.J., assigned.¹

¹**REPORTER'S NOTE:** Judge Richard W. Wahl was appointed to hear case No. 89,715 vice Justice Beier pursuant to the authority vested in the Supreme Court by K.S.A. 20-2616.

END



| [Keyword](#) | [Name](#) » [SupCt](#) - [CtApp](#) | [Docket](#) | [Date](#) |

Comments to: [WebMaster, kscases@kscourts.org](mailto:kscases@kscourts.org).

Updated: December 12, 2003.

URL: <http://www.kscourts.org/kscases/supct/2003/20031212/89715.htm>.

[Home](#)[Bill Search](#)[Current Happenings](#)[Listen In Live!](#)[Helpful Hints](#)[Site Index](#)[Home](#) > [Kansas Statutes](#) > [Kansas Statute No. 25-4157a](#)**25-4157a****Chapter 25.--ELECTIONS****Article 41.--ELECTION CAMPAIGNFINANCE; GENERAL**

25-4157a. Contributions; personal use prohibited; uses permitted; acceptance from another candidate or candidate committee; disposition of unexpended balances on termination of campaign. (a) No moneys received by any candidate or candidate committee of any candidate as a contribution under this act shall be used or be made available for the personal use of the candidate and no such moneys shall be used by such candidate or the candidate committee of such candidate except for:

(1) Legitimate campaign purposes;

(2) expenses of holding political office ;

(3) contributions to the party committees of the political party of which such candidate is a member;

(4) any membership dues or donations paid to a community service or civic organization in the name of the candidate or candidate committee of any candidate;

(5) expenses incurred in the purchase of tickets to meals and special events sponsored by any organization the major purpose of which is to promote or facilitate the social, business, commercial or economic well being of the local community; or

(6) expenses incurred in the purchase and mailing of greeting cards to voters and constituents.

For the purpose of this subsection, expenditures for "personal use" shall include expenditures to defray normal living expenses for the candidate or the candidate's family and expenditures for the personal benefit of the candidate having no direct connection with or effect upon the campaign of the candidate or the holding of public office.

(b) No moneys received by any candidate or candidate committee of any candidate as a contribution shall be used to pay interest or any other finance charges upon moneys loaned to the campaign by such candidate or the spouse of such candidate.

(c) No candidate or candidate committee shall accept from any other candidate or candidate committee for any candidate for local, state or national office, any moneys received by such candidate or candidate committee as a campaign contribution. The provisions of this subsection shall not be construed to prohibit a candidate or candidate committee from accepting moneys from another candidate or candidate committee if such moneys constitute a reimbursement for one candidate's proportional share of the cost of any campaign activity participated in by both candidates involved. Such reimbursement shall not exceed an amount equal to the proportional share of the cost directly benefiting and attributable to the personal campaign of the candidate making such reimbursement.

(d) At the time of the termination of any campaign and prior to the filing of a termination report in accordance with K.S.A. 25-4157, and amendments thereto, all residual funds otherwise not obligated for the payment of expenses incurred in such campaign or the holding of office shall be contributed to a charitable organization, as defined by the laws of the state, contributed to a party committee or returned as a refund in whole or in part to any contributor or contributors from whom received or paid into the general fund of the state.

History: L. 1989, ch. 111, § 1; L. 1990, ch. 306, § 8; L. 1991, ch. 150, § 12; L. 1992, ch. 234, § 1; L. 1995, ch. 157, § 1; L. 1998, ch. 117, § 12; July 1.

Kansas State Capitol - 300 SW 10th St. - Topeka, Kansas 66612

Copyright © 2002 - 2003, Information Network of Kansas, Inc.
[Security Statement](#) | [Privacy Statement](#) | [Terms of Use](#) | [Accessibility Policy](#) | [Help C](#)

House Ethics and Elections
3-15-04
Attachment 5

[Home](#)[Bill Search](#) | [Current Happenings](#) | [Listen In Live!](#) | [Helpful Hints](#) | [Site Index](#)[Home](#) > [Kansas Statutes](#) > [Kansas Administrative Regs](#) > [Kansas Administrative Regulation 19-22-1](#)

Kansas Administrative Regulation 19-22-1

19-22-1 Contributions. (a) General. A transfer of goods and services, or the forgiving of a debt, or the rendering of a discount, does not constitute a contribution if the transaction is made in the ordinary course of business or complies with common trade practices and does not have as its purpose the influencing of the nomination or election of any individual to state office. In addition, the carryover of funds or inventory by a candidate, candidate committee, party committee or political committee from one election period to another or the transfer thereof to a bona fide successor committee or candidacy does not constitute a contribution.

(b) Transfer of funds. Except as provided in subsection (a), the transfer of funds between any two (2) or more candidates, candidate committees, party committees or political committees constitutes a contribution made to the recipient. (See K.A.R. 19-23-1(b) for the treatment of such transactions by the donor.)

(c) Candidate contributions. The transfer of a candidate's personal funds to the candidate's treasurer for use by the treasurer in the candidate's campaign constitutes a contribution made by the candidate.

(d) In-kind contributions. An in-kind contribution constitutes a contribution. Those transactions which are excluded from the definition of in-kind contribution are likewise excluded from the definition of contribution. (See K.A.R. 19-24 for the definition of in-kind contribution.) (Authorized by K.S.A. 1979 Supp. 25-4102(d), 25-4119a; effective, E-76-56, Nov. 26, 1975; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977; amended May 1, 1980.)

Home > [Kansas Statutes](#) > Kansas Statute No. 25-4143

25-4143

Chapter 25.--ELECTIONS

Article 41.--ELECTION CAMPAIGNFINANCE; GENERAL

25-4143. Campaign finance; definitions. As used in the campaign finance act, unless the context otherwise requires:

- (a) "Candidate" means an individual who: (1) Appoints a treasurer or a candidate committee;
- (2) makes a public announcement of intention to seek nomination or election to state or local office;
- (3) makes any expenditure or accepts any contribution for such person's nomination or election to any state or local office; or
- (4) files a declaration or petition to become a candidate for state or local office.
- (b) "Candidate committee" means a committee appointed by a candidate to receive contributions and make expenditures for the candidate.
- (c) "Clearly identified candidate" means a candidate who has been identified by the:
 - (1) Use of the name of the candidate;
 - (2) use of a photograph or drawing of the candidate; or
 - (3) unambiguous reference to the candidate whether or not the name, photograph or drawing of such candidate is used.
- (d) "Commission" means the governmental ethics commission.
- (e) (1) "Contribution" means:
 - (A) Any advance, conveyance, deposit, distribution, gift, loan or payment of money or any other thing of value given to a candidate, candidate committee, party committee or political committee for the express purpose of nominating, electing or defeating a clearly identified candidate for a state or local office.
 - (B) Any advance, conveyance, deposit, distribution, gift, loan or payment of money or any other thing of value made to expressly advocate the nomination, election or defeat of a clearly identified candidate for a state or local office;
 - (C) a transfer of funds between any two or more candidate committees, party committees or political committees;
 - (D) the payment, by any person other than a candidate, candidate committee, party committee or political committee, of compensation to an individual for the personal services rendered without charge to or for a candidate's campaign or to or for any such committee;
 - (E) the purchase of tickets or admissions to, or advertisements in journals or programs for, testimonial events;
 - (F) a mailing of materials designed to expressly advocate the nomination, election or defeat of a clearly identified candidate, which is made and paid for by a party committee with the consent of such candidate.
- (2) "Contribution" does not include:
 - (A) The value of volunteer services provided without compensation;
 - (B) costs to a volunteer related to the rendering of volunteer services not exceeding a fair market value of \$50 during an allocable election period as provided in K.S.A. 25-4149, and amendments thereto;
 - (C) payment by a candidate or candidate's spouse for personal meals, lodging and travel by personal automobile of the candidate or candidate's spouse while campaigning;
 - (D) the value of goods donated to events such as testimonial events, bake sales, garage sales and auctions by any person not exceeding a fair market value of \$50 per event.
- (f) "Election" means:
 - (1) A primary or general election for state or local office; and
 - (2) a convention or caucus of a political party held to nominate a candidate for state or local office.

(g) (1) "Expenditure" means:

(A) Any purchase, payment, distribution, loan, advance, deposit or gift of money or any other thing of value made by a candidate, candidate committee, party committee or political committee for the express purpose of nominating, electing or defeating a clearly identified candidate for a state or local office.

(B) Any purchase, payment, distribution, loan, advance, deposit or gift of money or any other thing of value made to expressly advocate the nomination, election or defeat of a clearly identified candidate for a state or local office;

(C) any contract to make an expenditure;

(D) a transfer of funds between any two or more candidate committees, party committees or political committees; or

(E) payment of a candidate's filing fees.

(2) "Expenditure" does not include:

(A) The value of volunteer services provided without compensation;

(B) costs to a volunteer incidental to the rendering of volunteer services not exceeding a fair market value of \$50 during an allocable election period as provided in K.S.A. 25-4149, and amendments thereto;

(C) payment by a candidate or candidate's spouse for personal meals, lodging and travel by personal automobile of the candidate or candidate's spouse while campaigning or payment of such costs by the treasurer of a candidate or candidate committee;

(D) the value of goods donated to events such as testimonial events, bake sales, garage sales and auctions by any person not exceeding fair market value of \$50 per event; or

(E) any communication by an incumbent elected state or local officer with one or more individuals unless the primary purpose thereof is to expressly advocate the nomination, election or defeat of a clearly identified candidate.

(h) "Expressly advocate the nomination, election or defeat of a clearly identified candidate" means any communication which uses phrases including, but not limited to:

(1) "Vote for the secretary of state";

(2) "re-elect your senator";

(3) "support the democratic nominee";

(4) "cast your ballot for the republican challenger for governor";

(5) "Smith for senate";

(6) "Bob Jones in '98";

(7) "vote against Old Hickory";

(8) "defeat" accompanied by a picture of one or more candidates; or

(9) "Smith's the one."

(i) "Party committee" means:

(1) The state committee of a political party regulated by article 3 of chapter 25 of the Kansas Statutes Annotated, and amendments thereto;

(2) the county central committee or the state committee of a political party regulated under article 38 of chapter 25 of the Kansas Statutes Annotated, and amendments thereto;

(3) the bona fide national organization or committee of those political parties regulated by the Kansas Statutes Annotated;

(4) not more than one political committee established by the state committee of any such political party and designated as a recognized political committee for the senate;

(5) not more than one political committee established by the state committee of any such political party and designated as a recognized political committee for the house of representatives; or

6-2

(6) not more than one political committee per congressional district established by the state committee of a political party regulated under article 38 of chapter 25 of the Kansas Statutes Annotated, and amendments thereto, and designated as a congressional district party committee.

(j) "Person" means any individual, committee, corporation, partnership, trust, organization or association.

(k) (1) "Political committee" means any combination of two or more individuals or any person other than an individual, a major purpose of which is to expressly advocate the nomination, election or defeat of a clearly identified candidate for state or local office or make contributions to or expenditures for the nomination, election or defeat of a clearly identified candidate for state or local office.

(2) "Political committee" shall not include a candidate committee or a party committee.

(l) "Receipt" means a contribution or any other money or thing of value, but not including volunteer services provided without compensation, received by a treasurer in the treasurer's official capacity.

(m) "State office" means any state office as defined in K.S.A. 25-2505, and amendments thereto.

(n) "Testimonial event" means an event held for the benefit of an individual who is a candidate to raise contributions for such candidate's campaign. Testimonial events include but are not limited to dinners, luncheons, rallies, barbecues and picnics.

(o) "Treasurer" means a treasurer of a candidate or of a candidate committee, a party committee or a political committee appointed under the campaign finance act or a treasurer of a combination of individuals or a person other than an individual which is subject to paragraph (2) of subsection (a) of K.S.A. 25-4172, and amendments thereto.

(p) "Local office" means a member of the governing body of a city of the first class, any elected office of a unified school district having 35,000 or more pupils regularly enrolled in the preceding school year, a county or of the board of public utilities.

History: L. 1981, ch. 171, § 2; L. 1989, ch. 111, § 3; L. 1990, ch. 122, § 16; L. 1991, ch. 150, § 6; L. 1995, ch. 192, § 14; L. 1998, ch. 117, § 4; L. 2000, ch. 124, § 12; L. 2001, ch. 159, § 1; July 1.

Kansas State Capitol - 300 SW 10th St - Topeka, Kansas 66612

Copyright © 2002 - 2003, Information Network of Kansas, Inc.
Security Statement | Privacy Statement | Terms of Use | Accessibility Policy | Help Center | Survey
Page Last Modified Friday, December 05, 2003 12:09 PM

**Testimony on Senate Bill 376
March 15, 2004**

Chairman Myers and member of the Committee, it is a pleasure to see you again and thank you for the opportunity to offer testimony in support of SB 376.

SB 376 as amended by Senate Committee of the Whole appears to properly clarify that the transfer of funds to a bona fide successor committee or candidacy is not considered a contribution. In addition, it provides for the proper definition of the term “Bona fide successor committee or candidacy”. The term “Public office” is define to include both local as well as state offices.

The bill also permits the transfer of residual funds for the purpose of retiring remaining debt and also the acceptance of contribution to the original candidacy sufficient to retire debt.

Finally, it deems all campaign transfers occurring between January 1, 1976 and the effective date of this act to be in compliance with the Campaign Finance Act in existence at the time of the transfer, regardless of when the original campaign

funds is closed after the transfer is made. The provisions of the bill will become effective on the date of its publication in the Kansas Register.

Thank you for your prompt consideration on this legislation.

A handwritten signature in black ink, appearing to read 'Carlos Mayans', with a long, sweeping flourish extending to the right.

**Carlos Mayans, Mayor
City of Wichita**

**GOVERNMENTAL ETHICS COMMISSION****Testimony before House Committee on Ethics and Elections****SB 376****by Carol Williams****March 15, 2004**

On behalf of the Governmental Ethics Commission, I stand before you today as neither a proponent or opponent of SB 376. The Governmental Ethics Commission does not take a position on this bill. This testimony is being provided as background information and to explain the amendments and new language being provided for K.S.A. 25-4143 and K.S.A. 25-4157a.

Senate Bill 376 was introduced to address the Kansas Supreme Court decision in *Joan Cole v Carlos Mayans and Winston Kenton* handed down in December of 2003. In its' decision, the Court ruled that Carlos Mayans, a candidate for Mayor in the city of Wichita, is prohibited from transferring funds from his legislative campaign account to his mayoral account. The Court ruled the transfer of funds from one campaign account to another is a contribution and that K.S.A. 25-4157a(c) prohibits contributions between candidacies.

As background, in July of 2002, Representative Mayans requested an advisory opinion from the Commission as to whether he could transfer his State Representative campaign funds to a campaign account to run as a candidate for Mayor in Wichita. In Opinion 2002-20, the Commission stated "Nothing in the Kansas Campaign Finance Act prohibits a state legislator from using his existing campaign funds to run for a city office". Acting upon Opinion 2002-20, Representative Mayans transferred funds from his State Representative campaign account to a new mayoral campaign account. In February 2003, Mr. Mayans' attorney requested another advisory opinion from the Commission. The Commission was asked if the Campaign Finance

**GOVERNMENTAL ETHICS COMMISSION**

July 18, 2002

Opinion No. 2002-20

The Honorable Carlos Mayans
Kansas State Representative, 100th District
1842 N. Valleyview
Wichita, Kansas 67212

Dear Representative Mayans:

This opinion is in response to your letter of July 3, 2002, in which you request an opinion from the Kansas Governmental Ethics Commission concerning the Campaign Finance Act (K.S.A. 25-4142 *et seq.*). We note at the outset that the Commission's jurisdiction concerning your question is limited to the application of K.S.A. 25-4142 *et seq.* Thus, whether some other statutory system, common law theory or agency rule or regulation applies to your inquiry is not covered by this opinion.

FACTUAL STATEMENT:

We understand that you request this opinion in your capacity as an incumbent state legislator. You advise us that you may want to run for an elected position as the Mayor of Wichita. You further advise us that you would like to use your existing legislative campaign funds for this election. You note that the City of Wichita has passed Ordinance Number 44-852 which prohibits certain campaign contributions to candidates.


QUESTION:

May a state legislator use his State Representative Candidate Committee campaign funds to run for the Mayor of Wichita, pursuant to the Kansas Campaign Finance Act?

OPINION:

Nothing in the Kansas Campaign Finance Act prohibits a state legislator from using his existing campaign funds to run for a city office. See K.A.R. 19-22-1 and Commission Opinion 1997-17. You question the application of Wichita Ordinance Number 44-852. This Commission is not in a position to address this issue; as Wichita ordinances are not within our jurisdiction.

Sincerely,


Daniel Severt, Chairman
By Direction of the Commission

DS:VMG:dlw

**GOVERNMENTAL ETHICS COMMISSION**

February 20, 2003

Opinion No. 2003-05

Richard A. Olmstead
Husch & Eppenberger, LLC
Epic Center
301 North Main Street, Suite 600
Wichita, Kansas 67202

Dear Mr. Olmstead:

This opinion is in response to your letter of February 11, 2003, in which you request an opinion from the Kansas Governmental Ethics Commission concerning the Campaign Finance Act (K.S.A. 25-4142 *et seq.*). We note at the outset that the Commission's jurisdiction concerning your question is limited to the application of K.S.A. 25-4142 *et seq.* Thus, whether some other statutory system, common law theory or agency rule or regulation applies to your inquiry is not covered by this opinion.

FACTUAL STATEMENT:

We understand that you request this opinion on behalf of former state legislator Carlos Mayans who is currently a candidate for Mayor of Wichita. You have explained that on August 15, 2002, with the intent of starting a bona fide successor campaign, Mr. Mayans transferred \$50,000 from his Legislative campaign fund (Legislative Fund) to his Mayoral campaign fund (Mayoral Fund). This left his Legislative Fund with a balance of approximately \$22,000. Mr. Mayans then made expenditures out of the Legislative Fund for legislative expenses in the amount of \$3,410.19 and attorney fees in the amount of \$11,751.99 related to questions surrounding his ability to use campaign funds from his Legislative Fund in his Mayoral campaign. On December 31, 2002, Mr. Mayans closed the Legislative Fund and transferred the remaining balance of \$6,060.51 to his Mayoral Fund.

After contacting the Commission, Mr. Mayans learned that for his Mayoral Fund to be treated as a bona fide successor candidacy pursuant to K.A.R. 19-22-1, he should have transferred the entire balance and closed his Legislative Fund on August 15, 2002. To cure this mistake, Mr. Mayans reimbursed the Mayoral Fund with his own personal funds in the amount of \$3,410.19. He did not reimburse the Mayoral Fund for the \$11,751.99 in professional services rendered, because, after consulting with the Commission's staff, he believed this expense was a legitimate campaign expenditure for his mayoral campaign. As a result of these actions, Mr. Mayans believes that since August 15, 2002 all funds in his Legislative Fund have been either transferred to or used for the funding of his mayoral campaign which would then constitute a bona fide successor campaign.

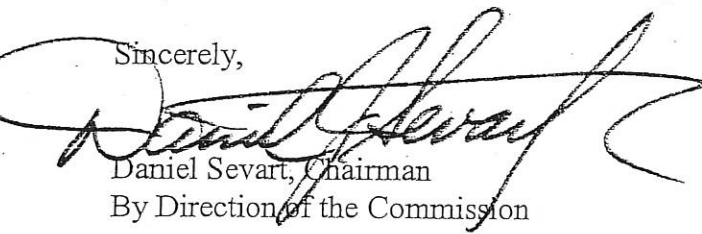
2. Or, he may choose to retain the first campaign account (to be used for the expenses of holding the first public office and legitimate campaign purposes related to a campaign for the first office and eventually, if the candidate chooses to close that account, distribute the funds pursuant to K.S.A. 25-4157a(d)) and also open a new campaign account for the second office sought with campaign funds solicited specifically for that second office. Pursuant to K.S.A. 25-4157a(c)), however, if he chooses to retain the first account, he may not transfer any of the money from his first campaign fund to his second campaign fund because they are considered separate candidacies.

Therefore, with respect to your first question, so long as a candidate carries over the remaining balance of his first campaign fund to a bona fide successor campaign, the Campaign Finance Act does not prohibit the transfer. If, however, the candidate chooses to retain the first account, K.S.A. 25-4157a(c)) prohibits the transfer of campaign funds between the two accounts.

With respect to your second question, although Mr. Mayans erred in not transferring all of his Legislative Fund at the time he originally opened the Mayoral Fund, he has corrected this mistake by reimbursing his Mayoral Fund for the Legislative expenditures. Because Mr. Mayans intended his mayoral campaign to be a successor campaign to his legislative campaign, and because all of the remaining money in the Legislative Fund was either transferred to or used for expenses related to the Mayoral campaign, the Commission considers the Mayoral campaign to be a bona fide successor candidacy.

With respect to your third question, K.A.R. 19-22-1 specifically provides that the "carryover of funds or inventory by a candidate . . . or the transfer thereof to a bona fide successor . . . candidacy does not constitute a contribution." This regulation has been in effect since 1975 and the Commission has been issuing opinions to this effect since 1976. See e.g. Commission Opinions 1976-03, 1997-03, 1997-16, 2002-09, 2002-20. It should be noted that the Legislature is well aware of the Commission's interpretation, as each election year the Commission's staff provides literature and other information to members of the Legislature which indicates that they may carryover their campaign funds from one campaign to another. Therefore, pursuant to K.A.R. 19-22-1, the carryover of funds from one campaign to a bona fide successor campaign is not a contribution, and does not violate the Campaign Finance Act.

Sincerely,



Daniel Severt, Chairman
By Direction of the Commission

DS:VMG:dlw

OFFICE OF
KEVIN W. ANSELM
CRAWFORD COUNTY CLERK

PO BOX 249
GIRARD , KS 66743

620-724-6115
FAX 620-724-6007

March 15, 2004

RE: SB 376

Chairman Myers and Members Of The Committee:

I have talked to several County Elected Officials, and it is my opinion that being able to transfer campaign monies that were meant for the State level election should not be brought back down for a County or City Officials elections. I believe this is a bad public policy. My opinion is that the monies given by a person or persons should be given back to them or given to the state party they are affiliated with.

I have no problem with having a race for a political position as long as the process is fair. I believe sometimes we as elected officials forget we are here for the people and not for our own self gain.

Thank you for taking the time to read my opinion on this proposed bill.

Sincerely,



Kevin Anselmi
Crawford County Clerk

SENATE BILL No. 376

By Committee on Elections and Local Government

1-27

12 AN ACT concerning ~~campaign finance~~; relating to use of unexpended
13 campaign funds; amending K.S.A. 25-4142 and 25-4157a and K.S.A.
14 2003 Supp. 25-4143 ~~[[and 25-4157a]]~~ and K.S.A. 2003 Supp. 25-
15 4143] and repealing the existing sections ~~section~~ [sections].
16

*certain elected officials
relating to certain expenses thereof;
, 25-4157a and 40-269*

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

18 Section 1. K.S.A. 25-4142 is hereby amended to read as follows: 25-
19 4142. K.S.A. 25-4119e, 25-4119f, 25-4119g, 25-4142 through 25-4187 and
20 K.S.A. ~~25-4153b section 4 2~~ [4], and amendments thereto, shall be known
21 and may be cited as the campaign finance act.

22 Sec. 2. K.S.A. 2003 Supp. 25-4143 is hereby amended to read as
23 follows: 25-4143. As used in the campaign finance act, unless the context
24 otherwise requires:

25 —(a) “Candidate” means an individual who: (1) Appoints a treasurer or
26 a candidate committee;

27 —(2) makes a public announcement of intention to seek nomination or
28 election to state or local office;

29 —(3) makes any expenditure or accepts any contribution for such per-
30 son’s nomination or election to any state or local office; or

31 —(4) files a declaration or petition to become a candidate for state or
32 local office.

33 —(b) “Candidate committee” means a committee appointed by a can-
34 didate to receive contributions and make expenditures for the candidate.

35 —(c) “Clearly identified candidate” means a candidate who has been
36 identified by the:

37 —(1) Use of the name of the candidate;

38 —(2) use of a photograph or drawing of the candidate; or

39 —(3) unambiguous reference to the candidate whether or not the
40 name, photograph or drawing of such candidate is used.

41 —(d) “Commission” means the governmental ethics commission.

42 —(e) (1) “Contribution” means:

43 —(A) Any advance, conveyance, deposit, distribution, gift, loan or pay-

Representative Myers

1 [(5) transferred to a bona fide successor committee or candidacy es-
2 tablished by the candidate; or

3 [(6) transferred for the purpose of retiring the remaining debt to the
4 original committee or candidacy from which funds were transferred pur-
5 suant to paragraph (2) of subsection (f).

6 [Whenever a transfer to a bona fide successor committee or candidacy
7 is made pursuant to paragraph (5), all moneys shall be transferred to the
8 bona fide successor committee or candidacy.

9 [(e) Upon transferring money to a bona fide successor committee or
10 candidacy as defined by paragraph (2) of subsection (f), the candidate
11 may only accept contributions to the original candidacy sufficient to retire
12 the debt. Such contributions shall be subject to the contribution limits for
13 the original office sought as set forth in K.S.A. 25-4153 and amendments
14 thereto. Once the candidate has received sufficient contributions to retire
15 the debt, the candidate must terminate the candidacy pursuant to the
16 provisions set forth in subsection (d).

17 [(f) For the purposes of this section, "bona fide successor committee
18 or candidacy" means:

19 [(1) The candidate's campaign committee or candidacy for a public
20 office initiated at the termination of the original candidacy; or

21 [(2) the candidate's campaign committee or candidacy initiated at the
22 time of the transfer of all moneys to a new campaign committee or can-
23 didacy for public office when there is debt in the original campaign at the
24 time of the transfer and the candidate does not terminate the original
25 campaign committee or candidacy.

Sec. 4. ~~K.S.~~ K.S., Ar. 49-269 is hereby amended to read
as follows:

46-269. Same; public record; content of report; contribution to a single special event; reports by lobbyists; requirements; maintenance of records; inspection by commission. Each report required to be filed by K.S.A. 46-268, and amendments thereto, is a public record and shall be open to public inspection upon request. Such report shall disclose the following:

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

(b) The aggregate amount or value of all expenditures made, except for expenses of general

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

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

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

(c) (1) In addition to the information reported pursuant to subsection (b), each lobbyist expending an aggregate amount of \$100 or more for lobbying in any reporting period shall report any gift, entertainment or hospitality provided to members of the legislature, members of the judicial branch

10-2

Government and any employees of the legislature or judicial branch of government. Such report shall disclose the full name of the legislator, member of the judicial branch and employee who received such gift, entertainment or hospitality and the amount expended on such gift, entertainment or hospitality.

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

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

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

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

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

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

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

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

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

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

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

History: L. 1974, ch. 353, § 55; L. 1975, ch. 272, § 20; L. 1981, ch. 171, § 45; L. 1983, ch. 173, § 2; L. 1987, ch. 199, § 1; L. 1990, ch. 306, § 12; L. 1991, ch. 150, § 44; L. 1997, ch. 155, § 1; L. 2000, ch. 124, § 3; July 1.

entertainment or hospitality in the form of recreation, food and beverages provided at a meeting, seminar or event organized by any national, nonprofit or nonpartisan organization for the purpose of serving, informing or educating and strengthening state legislatures and attended by legislators of other states when the presence of the legislator of this state at such meeting, seminar or event serves a legitimate state purpose or interest; and (F)

; or (iii) all members of a committee of the legislature or a committee of either house of the legislature

5 26 [New Sec. ~~4~~] (a) For the period commencing on January 1,
 27 1976, and ending on the day preceding the effective date of this act,
 28 any candidate who transferred campaign funds to a bona fide suc-
 29 cessor candidacy, as such term is defined in K.S.A. 25-4157a, and
 30 amendments thereto, shall be deemed to have made such transfer
 31 in compliance with the provisions of the campaign finance act in
 32 existence at the time of such transfer regardless of when the original
 33 campaign fund is closed after the date such transfer is made and
 34 such transfer is hereby validated.

35 [(b) This section shall be part of and supplemental to the cam-
 36 paign finance act.]

6 37 Sec. 5: ~~3~~ ~~[3]~~ K.S.A. 25-4142 and ~~25-4157a~~ and K.S.A. 2003 Supp-
 38 ~~25-4143~~ are is ~~[and 25-4157a]~~ ~~and K.S.A. 2003 Supp. 25-4143 are]~~

and
 , 25-4157a n 40-269

7 40 Sec. 6: ~~4~~ ~~[6]~~ This act shall take effect and be in force from and
 41 after its publication in the Kansas register.

SENATE BILL No. 376

By Committee on Elections and Local Government

1-27

12 AN ACT concerning campaign finance; relating to use of unexpended
13 campaign funds; amending K.S.A. 25-4142 and ~~25-4157a~~ and K.S.A.
14 ~~2003 Supp. 25-4143~~ ²⁵⁻⁴¹⁵³ [and ~~25-4157a~~ and K.S.A. 2003 Supp. 25-
15 ~~4143~~] and repealing the existing sections ~~section~~ [sections].
16

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

18 Section 1. K.S.A. 25-4142 is hereby amended to read as follows: 25-
19 4142. K.S.A. 25-4119e, 25-4119f, 25-4119g, 25-4142 through 25-4187 and
20 K.S.A. ~~25-4153b~~ section 4 ~~2~~ [4], and amendments thereto, shall be known
21 and may be cited as the campaign finance act.

22 Sec. 2. ~~K.S.A. 2003 Supp. 25-4143~~ is hereby amended to read as
23 follows: 25-4143. As used in the campaign finance act, unless the context
24 otherwise requires:

25 —(a)—“Candidate” means an individual who: (1) Appoints a treasurer or
26 a candidate committee;

27 —(2)—makes a public announcement of intention to seek nomination or
28 election to state or local office;

29 —(3)—makes any expenditure or accepts any contribution for such per-
30 son’s nomination or election to any state or local office; or

31 —(4)—files a declaration or petition to become a candidate for state or
32 local office.

33 —(b)—“Candidate committee” means a committee appointed by a can-
34 didate to receive contributions and make expenditures for the candidate.

35 —(c)—“Clearly identified candidate” means a candidate who has been
36 identified by the:

37 —(1)—Use of the name of the candidate;

38 —(2)—use of a photograph or drawing of the candidate; or

39 —(3)—unambiguous reference to the candidate whether or not the
40 name, photograph or drawing of such candidate is used.

41 —(d)—“Commission” means the governmental ethics commission.

42 —(e) (1)—“Contribution” means:

43 —(A)—Any advance, conveyance, deposit, distribution, gift, loan or pay-

Representative Myers

House Ethics and Elections
3-15-04
Attachment 11

From and after September 1, 2004,
Sec. 3. K.S.A. 25-4153 is hereby amended to read as follows:

11-2

- 1 [(m) "Public office" means a state or local office.
- 2 [(n) "Local office" means:
- 3 [(1) A member of the governing body of a city of the first class;
- 4 [(2) an elected office of:
- 5 [(A) A unified school district having 35,000 or more pupils regularly
- 6 enrolled in the preceding school year;
- 7 [(B) a county; or
- 8 [(C) the board of public utilities.
- 9 ~~[(m) (o)~~ "State office" means any state office as defined in K.S.A.
- 10 25-2505, and amendments thereto.
- 11 ~~[(m) (p)~~ "Testimonial event" means an event held for the benefit
- 12 of an individual who is a candidate to raise contributions for such
- 13 candidate's campaign. Testimonial events include but are not lim-
- 14 ited to dinners, luncheons, rallies, barbecues and picnics.
- 15 ~~[(m) (q)~~ "Treasurer" means a treasurer of a candidate or of a
- 16 candidate committee, a party committee or a political committee
- 17 appointed under the campaign finance act or a treasurer of a com-
- 18 bination of individuals or a person other than an individual which
- 19 is subject to paragraph (2) of subsection (a) of K.S.A. 25-4172, and
- 20 amendments thereto.
- 21 ~~[(p)~~ "Local office" means a member of the governing body of a city
- 22 of the first class, any elected office of a unified school district having
- 23 35,000 or more pupils regularly enrolled in the preceding school year, a
- 24 county or of the board of public utilities.

25-4153. Contributions; limitations on amounts and use; minors under 18 years of age; cash contributions. (a) The aggregate amount contributed to a candidate and such candidate's candidate committee and to all party committees and political committees and dedicated to such candidate's campaign, by any political committee or any person except a party committee, the candidate or the candidate's spouse, shall not exceed the following:

(1) For the pair of offices of governor and lieutenant governor or for other state officers elected from the state as a whole, \$2,000 for each primary election (or in lieu thereof a caucus or convention of a political party) and an equal amount for each general election;

(2) For the office of member of the house of representatives, district judge, district magistrate judge, district attorney, member of the state board of education or a candidate for local office, ~~[\$500]~~ \$750, for each primary election (or in lieu thereof a caucus or convention of a political party) and an equal amount for each general election.

(3) For the office of state senator, ~~[\$1,000]~~ \$1,500 for each primary election (or in lieu thereof a caucus or convention of a political party) and an equal amount for each general election.

(b) For the purposes of this section, the face value of a loan at the end of the period of time allocable to the primary or general election is the amount subject to the limitations of this section. A loan in excess of the limits herein provided may be made during the allocable period if such loan is reduced to the permissible level, when combined with all other contributions from the person making such loan, at the end of such allocable period.

(c) For the purposes of this section, all contributions made by unemancipated children under 18 years of age shall be considered to be contributions made by the parent or parents of such children. The total amount of such contribution shall be attributed to a single custodial parent and 50% of such contribution to each of two parents.

(d) The aggregate amount contributed to a state party committee by a person other than a national party committee or a political committee shall not exceed \$15,000 in each calendar year; and the aggregate amount contributed to any other party committee by a person other than a

national party committee or a political committee shall not exceed \$5,000 in each calendar year.

The aggregate amount contributed by a national party committee to a state party committee shall not exceed \$25,000 in any calendar year, and the aggregate amount contributed to any other party committee by a national party committee shall not exceed \$10,000 in any calendar year.

The aggregate amount contributed to a party committee by a political committee shall not exceed \$5,000 in any calendar year.

(e) Any political funds which have been collected and were not subject to the reporting requirements of this act shall be deemed a person subject to these contribution limitations.

(f) Any political funds which have been collected and were subject to the reporting requirements of the campaign finance act shall not be used in or for the campaign of a candidate for a federal elective office.

(g) The amount contributed by each individual party committee of the same political party other than a national party committee to any candidate for office, for any primary election at which two or more candidates are seeking the nomination of such party shall not exceed the following:

(1) For the pair of offices of governor and lieutenant governor and for each of the other state officers elected from the state as a whole, \$2,000 for each primary election (or in lieu thereof a caucus or convention of a political party);

(2) For the office of member of the house of representatives, district judge, district magistrate judge, district attorney, member of the state board of education or a candidate for local office, \$500 for each primary election (or in lieu thereof a caucus or convention of a political party).

(3) For the office of state senator, \$1,000 for each primary election (or in lieu thereof a caucus or convention of a political party).

(h) When a candidate for a specific cycle does not run for office, the contribution limitations of this section shall apply as though the individual had sought office.

(i) No person shall make any contribution or contributions to any candidate or the candidate committee of any candidate in the form of money

or currency of the United States which in the aggregate exceeds \$100 for any one primary or general election, and no candidate or candidate committee of any candidate shall accept any contribution or contributions in the form of money or currency of the United States which in the aggregate exceeds \$100 from any one person for any one primary or general election.

History: L. 1981, ch. 171, § 12; L. 1986, ch. 115, § 80; L. 1989, ch. 111, § 5; L. 1990, ch. 122 § 8; L. 1991, ch. 150, § 11; July 1.

-750

-1500

4

25 [Sec. ~~3~~ K.S.A. 25-4157a is hereby amended to read as follows:

26 ~~25-4157a.~~ (a) No moneys received by any candidate or candidate
27 committee of any candidate as a contribution under this act shall
28 be used or be made available for the personal use of the candidate
29 and no such moneys shall be used by such candidate or the candi-
30 date committee of such candidate except for:

- 31 [(1) Legitimate campaign purposes;
- 32 [(2) expenses of holding political office ;
- 33 [(3) contributions to the party committees of the political party
34 of which such candidate is a member;
- 35 [(4) any membership dues or donations paid to a community
36 service, charitable or civic organization in the name of the candidate
37 or candidate committee of any candidate;
- 38 [(5) expenses incurred in the purchase of tickets to meals and
39 special events sponsored by any organization the major purpose of
40 which is to promote or facilitate the social, business, commercial or
41 economic well being of the local community; or
- 42 [(6) expenses incurred in the purchase and mailing of greeting
43 cards to voters and constituents.

11-4

1 [(5) transferred to a bona fide successor committee or candidacy es-
2 tablished by the candidate; or

3 [(6) transferred for the purpose of retiring the remaining debt to the
4 original committee or candidacy from which funds were transferred pur-
5 suant to paragraph (2) of subsection (f).

6 [Whenever a transfer to a bona fide successor committee or candidacy
7 is made pursuant to paragraph (5), all moneys shall be transferred to the
8 bona fide successor committee or candidacy.

9 [(e) Upon transferring money to a bona fide successor committee or
10 candidacy as defined by paragraph (2) of subsection (f), the candidate
11 may only accept contributions to the original candidacy sufficient to retire
12 the debt. Such contributions shall be subject to the contribution limits for
13 the original office sought as set forth in K.S.A. 25-4153 and amendments
14 thereto. Once the candidate has received sufficient contributions to retire
15 the debt, the candidate must terminate the candidacy pursuant to the
16 provisions set forth in subsection (d).

17 [(f) For the purposes of this section, "bona fide successor committee
18 or candidacy" means:

19 [(1) The candidate's campaign committee or candidacy for a public
20 office initiated at the termination of the original candidacy; or

21 [(2) the candidate's campaign committee or candidacy initiated at the
22 time of the transfer of all moneys to a new campaign committee or can-
23 didacy for public office when there is debt in the original campaign at the
24 time of the transfer and the candidate does not terminate the original
25 campaign committee or candidacy.

5 26 [New Sec. ~~4~~.] (a) For the period commencing on January 1,
27 1976, and ending on the day preceding the effective date of this act,
28 any candidate who transferred campaign funds to a bona fide suc-
29 cessor candidacy, as such term is defined in K.S.A. 25-4157a, and
30 amendments thereto, shall be deemed to have made such transfer
31 in compliance with the provisions of the campaign finance act in
32 existence at the time of such transfer regardless of when the original
33 campaign fund is closed after the date such transfer is made and
34 such transfer is hereby validated.

35 [(b) This section shall be part of and supplemental to the cam-
36 paign finance act.]

6 37 Sec. 5: ~~3~~ ~~3~~.] K.S.A. 25-4142 and 25-4157a and K.S.A. 2003 Supp.
38 25-4143 are is [and 25-4157a and K.S.A. 2003 Supp. 25-4143 are]
39 hereby repealed.

8 40 Sec. 6: ~~4~~ ~~4~~.] This act shall take effect and be in force from and
41 after its publication in the Kansas register.

Aug 4 2004

Sec. 7. On and after September 1, 2004,
K.S.A. 25-4153 is hereby repealed.

SENATE BILL No. 376

By Committee on Elections and Local Government

1-27

12 AN ACT concerning campaign finance; relating to use of unexpended
13 campaign funds; amending K.S.A. 25-4142 and ~~25-4157a~~ and K.S.A.
14 ~~2003-Supp. 25-4143~~ [and ~~25-4157a~~ and K.S.A. 2003 Supp. 25-
15 ~~4143~~] and repealing the existing sections ~~section~~ [sections].
16

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

18 Section 1. K.S.A. 25-4142 is hereby amended to read as follows: 25-
19 4142, K.S.A. 25-4119e, 25-4119f, 25-4119g, 25-4142 through 25-4187 and
20 ~~K.S.A. 25-4153b~~ section ~~4 2~~ [4], and amendments thereto, shall be known
21 and may be cited as the campaign finance act.

22 Sec. 2. ~~K.S.A. 2003 Supp. 25-4143~~ is hereby amended to read as
23 follows: ~~25-4143~~. As used in the campaign finance act, unless the context
24 otherwise requires:

25 —(a) “Candidate” means an individual who: (1) Appoints a treasurer or
26 a candidate committee;

27 —(2) makes a public announcement of intention to seek nomination or
28 election to state or local office;

29 —(3) makes any expenditure or accepts any contribution for such per-
30 son’s nomination or election to any state or local office; or

31 —(4) files a declaration or petition to become a candidate for state or
32 local office;

33 —(b) “Candidate committee” means a committee appointed by a can-
34 didate to receive contributions and make expenditures for the candidate.

35 —(c) “Clearly identified candidate” means a candidate who has been
36 identified by the:

37 —(1) Use of the name of the candidate;

38 —(2) use of a photograph or drawing of the candidate; or

39 —(3) unambiguous reference to the candidate whether or not the
40 name, photograph or drawing of such candidate is used.

41 —(d) “Commission” means the governmental ethics commission.

42 —(e) (1) “Contribution” means:

43 —(A) Any advance, conveyance, deposit, distribution, gift, loan or pay-

Rep. Myers

House Ethics and Elections
3-15-04
Attachment 12

12-2

1 [(5) transferred to a bona fide successor committee or candidacy es-
2 tablished by the candidate; or

3 [(6) transferred for the purpose of retiring the remaining debt to the
4 original committee or candidacy from which funds were transferred pur-
5 suant to paragraph (2) of subsection (f)] (e)

6 [Whenever a transfer to a bona fide successor committee or candidacy
7 is made pursuant to paragraph (5), all moneys shall be transferred to the
8 bona fide successor committee or candidacy.

9 [(e) Upon transferring money to a bona fide successor committee or
10 candidacy as defined by paragraph (2) of subsection (f), the candidate
11 may only accept contributions to the original candidacy sufficient to retire
12 the debt. Such contributions shall be subject to the contribution limits for
13 the original office sought as set forth in K.S.A. 25-4153 and amendments
14 thereto. Once the candidate has received sufficient contributions to retire
15 the debt, the candidate must terminate the candidacy pursuant to the
16 provisions set forth in subsection (d).

17 [(f) For the purposes of this section, "bona fide successor committee
18 or candidacy" means:

19 [(1) The candidate's campaign committee or candidacy for a public
20 office initiated at the termination of the original candidacy; or

21 [(2) the candidate's campaign committee or candidacy initiated at the
22 time of the transfer of all moneys to a new campaign committee or can-
23 didacy for public office when there is debt in the original campaign at the
24 time of the transfer and the candidate does not terminate the original
25 campaign committee or candidacy.

26 [New Sec. 4. (a) For the period commencing on January 1,
27 1976, and ending on the day preceding the effective date of this act,
28 any candidate who transferred campaign funds to a bona fide suc-
29 cessor candidacy, as such term is defined in K.S.A. 25-4157a, and
30 amendments thereto, shall be deemed to have made such transfer
31 in compliance with the provisions of the campaign finance act in
32 existence at the time of such transfer regardless of when the original
33 campaign fund is closed after the date such transfer is made and
34 such transfer is hereby validated.

35 [(b) This section shall be part of and supplemental to the cam-
36 paign finance act.]

37 Sec. 5. 3. [3.] K.S.A. 25-4142 and 25-4157a and K.S.A. 2003 Supp.
38 25-4143 are ~~is~~ [and 25-4157a and K.S.A. 2003 Supp. 25-4143 are]
39 hereby repealed.

40 Sec. 6. 4. [6.] This act shall take effect and be in force from and
41 after its publication in the Kansas register.

New Section 5. Upon transferring money to a bona fide successor committee or candidacy as defined by paragraph (2) of subsection (e) of K.S.A. 25-4157a, and amendments thereto, the candidate may only accept contributions to the original candidacy sufficient to retire the debt. Such contributions shall be subject to the contribution limits for the original office sought as set forth in K.S.A. 25-4153 and amendments thereto. Once the candidate has received sufficient contributions to retire the debt, the candidate must terminate the candidacy pursuant to the provisions set forth in subsection (d) of of K.S.A. 25-4157a, and amendments thereto.