Approved: March 23, 2004
Date

MINUTES OF THE SENATE ELECTIONS AND LOCAL GOVERNMENT COMMITTEE

The meeting was called to order by Chairperson Barbara Allen at 1:30 p.m. on January 20, 2004 in Room 423-S of the Capitol.

All members were present.

Committee staff present:
Mike Heim, Legislative Research
Martha Dorsey, Legislative Research
Ken Wilke, Revisor of Statutes
Nancy Kirkwood, Committee Secretary

Conferees appearing before the committee:
Carol Williams, Ethics Commission
Carlos Mayans, Mayor of Wichita

Others attending:
See Attached List.

Chairperson Allen welcomed the committee for the 2004 Session. The Chair introduced Senator Donald Betts, Wichita, Ranking Minority Member to the committee. Chairperson Allen introduced the returning staff, and new staff person, Martha Dorsey, from Legislative Research.

Bill Introductions

Chairperson Allen called for bill introductions. Senator Schmidt had a constituent request for needed legislation; landlords held financially accountable for a tenants bill regarding water and sewer service. Senator Schmidt moved to introduce this legislation, seconded by Senator Buhler. The motion carried.

Chairperson Allen informed the committee it would have an informational meeting on the recent issue of "Cole v. Mayans". Ken Wilke, Revisor, handed out a memorandum on subject: "Cole v. Mayans and Kenton, Kansas Supreme Court Case No. 89,715 (December 15, 2003) (Attachment 1). Included in the memorandum were a copy of the supreme court case, two opinions from Ethics Commission (2003-05 and 2000-20) copies of KSA25-4143 and 25-4157a, Ethics Regulations (KAR 19-22-1).

Carol Williams, recognized by the Chair, summarized the Ethics Commission's opinions and told the committee the Commission was having language drafted to present to the legislature when it was ready and reviewed. Carol stated the Commission had given nine opinions since 1976 and consistently held for twenty-eight years (Attachment 2).

Mayor Carlos Mayans was present to address the committee. Mayor Mayans stated he had followed the rules and received opinions. If the Ethics Commission's opinions can not be counted on, we have no other place to turn. He had followed all the channels and is now being penalized for spending legislative money when told it was okay.

Chairperson Allen informed the committee it would be meeting Thursday. It would be reviewing the present state of the Help America Vote issue. The committee will be hearing from the Secretary of State and possibly someone from the Governor's office.

The meeting adjourned at 2:25 p.m.

Sign In Sheet 1-2004

Elections & Local Gov -

Jessa Bojon	505	
Lindsay Campbell	Intern	
Erin Land	Intern	
Susan Paxson		
Denny Burgess	City of Wichita	
Eric Collins	Ks Govt Consulting	

MEMORANDUM

To: Senate Committee on Election and Local Government

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

Date: January 20, 2004

Subject: Cole v. Mayans and Kenton, Kansas Supreme Court 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)

Senate Elec & Loc Gov
01-20-04
Attachment 1

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.

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

Sincerely,

Daniel Sevart, Chairman
By Direction of the Commission

DS:VMG:dlw

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) 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.

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.

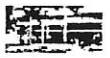
Kansas Administrative Regulation 19-22-1

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.)

 | Keyword | Name » SupCt - CtApp | Docket | Date |

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 dutyto 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 opportunityto exercise its discretion or special expertise. When an administrative remedy is provided by statute, such a remedy must ordinarily be exhausted before a partycan bring the matter before the courts. However, if no agencyremedy 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.

1-10

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, statues 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 necessityof jurisdiction which no court would have if administrative remedies are not exhausted. An appellate court has a dutyto 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 cityordinances, 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 partyraised 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 froma 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 fromhis 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 originallypresented to the district court.

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

could not have proceeded byfiling a complaint with the Commission. Unlike the Campaign Finance Act, the Wichita ordinances do not specifythe procedure to be used when someone believes the ordinances are not being followed. The Wichita campaign finance ordinances neither establish an agencyor body to review concerns about the application of the ordinances nor limit who can bring a cause of action. When there is no agencyremedy 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 Countydistrict 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 anyother 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 byoutlining 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 anycontribution for such person's nomination or election to anystate 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 bya candidate to receive contributions and make expenditures for the candidate.

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

(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 clearlyidentified 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 clearlyidentified candidate for a state or local office;

(C) a transfer of funds between anytwo 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 Comm'rs*, 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, statues 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 byestablishing specific and limited depositories for such residual funds froma 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 fromusing 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 frommany 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).

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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 fromstate 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 byan administrative agencycharged 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 agencyis 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 theyhave 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 authorityvested in the Supreme Court by K.S.A. 20-2616.

END

| Keyword | Name » SupCt - CtApp | Docket | Date |

1-26

Ethics Commission Opinions

STATE OF KANSAS

GOVERNMENTAL ETHICS COMMISSION
109 W. NINTH
TOPEKA, KANSAS 66612
PHONE: (913) 296-4219

Opinion No. 76-3

February 4, 1976

The Honorable John Simpson
Senator, District No. 24
P. O. Box 1403
Salina, Kansas 67401

Dear Senator Simpson:

This opinion is in response to your letter of December 5, 1975 in which you request an opinion from the Governmental Ethics Commission concerning the Campaign Finance Act, K.S.A. 1975 Supp. 25-4101 et seq.

We understand you request this opinion in your capacity as a state senator. You inform us that at the conclusion of your 1972 campaign the Simpson for Senate committee had a cash balance of approximately $900. These funds have been maintained in a Salina bank and there have been no deposits or withdrawals since 1972. The only authorized signature on the account is that of your campaign chairman for 1972. You are not authorized to write checks upon the account.

You also inform us that you have recently appointed a treasurer and chairman pursuant to K.S.A. 1975 Supp. 25-4101 et seq. for your 1976 Simpson for Senate Committee. The chairman of the 1972 committee desires to contribute the approximately $900 to this newly formed committee. It is intended that the distribution will take place so that $500 is allocable to the primary election period and the remaining balance allocable to the general election period.

Based on this factual situation, we understand you to ask the following four questions:

1. Does the transfer of funds from your 1972 committee to your 1976 committee constitute a contribution?

2. If so, in what name should the contribution be listed?

3. To whom should the contribution be attributed for the purposes of the individual contribution limitations?

4. Does the procedure outlined above for the distribution of 1972 residual funds to your 1976 campaign comply with the Campaign Finance Act?

Senate Elec & Loc Gov
01-20-04
Attachment 2

In Opinion No. 74-21, a copy of which is enclosed, the Commission considered an analogous situation. There we determined that the transfer of funds constituted a contribution in the name of the prior committee which was attributable for the purposes of the individual contribution limitations to the individual who had actual discretion concerning the distribution of the funds. Upon reviewing these determinations, we believe they were incorrect. Specifically, we note from a review of the entire Act and especially K.S.A. 1975 Supp. 25-4109(a), that we are constrained to an opinion that the Act does not limit the amount of funds which may be carried over by one candidate committee from one election to another when the committee was formed after the effective date of the Act. Thus our prior opinion, which in effect limited the amount which could be carried over from a candidate committee formed prior to the effective date of the Act to a successor committee formed after the Act, treats the two situations differently. For example, a representative who ran for election in 1974 and now seeks a position in the senate would be able to carry over an unlimited amount of funds since the initial committee was formed after the effective date of the Act, while a senator seeking reelection would be restricted in the amount carried over from his or her candidate committee which was formed prior to the effective date of this Act. Since we believe the Act should not work such inequalities, it is our opinion that the transfer of funds from your 1972 committee to your 1976 committee does not constitute a contribution but should be listed as an "other receipt" in the name of the 1972 committee. In addition, since the transfer does not constitute a contribution, the individual contribution limitations do not apply to it. Thus, while the procedure you have outlined does comply with the Act, it is our opinion that the entire fund can be transferred at one time without affecting any person's contribution limitation.

In closing, we hereby overrule those portions of Opinion No. 74-21 which are inconsistent with this opinion.

Sincerely,

Calvin A. Strowig

CALVIN A. STROWIG, Chairman

By Direction of the Commission

CAS:ja

Return to opinion page.

April 24, 1997

Opinion No. 1997-16

Patricia A. Rahija
Wyandotte County Election Commissioner
9400 State Avenue
Kansas City, Kansas 66112-1588

Dear Ms. Rahija:

This opinion is in response to your letter of April 14, 1997, in which you request an opinion from the Kansas Commission on Governmental Standards and Conduct concerning the Kansas Campaign Finance Act (K.S.A. 25-4142 et seq.). We note at the outset that the Commission's jurisdiction is limited to the application of K.S.A. 25-4142 et seq., and whether some other statutory system, common law theory or agency rule and regulation applies to your inquiry is not covered by this opinion.

FACTUAL STATEMENT

We understand you request this opinion in your capacity as the Wyandotte County Election Commissioner. You advise us that a consolidation plan was drafted by the Wyandotte County/Kansas City Consolidation Study Commission, and approved by the voters in that county on April 1, 1997. This plan would consolidate several of the Kansas City, Kansas, and Wyandotte County governmental offices. The new system would be called the Unified Government, and would include one Chief Executive/Mayor and ten members of the Board of Commissioners.

Individuals interested in running for these eleven positions must file for candidacy by May 13, 1997. The candidates will then run for office and be elected during a Special Primary Election on July 8, 1997, and a Special General Election on September 9, 1997.

You have also provided us with your proposed plan for holding these special elections, the Consolidation Study Commission's recommendations to the Governor and legislature and a letter from the Consolidation Study Commission to the Governor.

QUESTION

Based on this factual statement, you ask us the following questions:

1. What contribution limitations, if any, are there for the Unified Government races?

2. Will individuals who had previous candidate bank accounts be required to close those accounts and open new ones for the Unified Government races?

OPINION

We first note that for the Kansas Campaign Finance Act (K.S.A. 25-4142 et seq.) to apply to the Unified Government races, those positions must either be for a "state office" or "local office" as those terms are defined in K.S.A. 25-4143. K.S.A. 25-4143(k) defines "state office" as "any state office defined by K.S.A. 25-2505 and amendments thereto". While that statute is beyond the jurisdiction of this Commission, clearly it does not apply to Unified Government races.

K.S.A. 1996 Supp. 25-4143(n) defines "local office" in pertinent part as the following:

"...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."

In reviewing the materials you have provided us, it appears that the Unified Government is to oversee the governmental operation of Wyandotte County. In addition, the Consolidation Study Commission used the general election laws applicable to county elections as a basis for the Unified Government Special Elections. Therefore, this Commission believes that the Chief Executive/Mayor and Board of Commissioners are "members of the governing body of a county", and are thereby seeking a "local office". Thus, the Kansas Campaign Finance Act applies to individuals who become candidates for those positions.

With this initial determination in mind, we turn to your first question. K.S.A. 25-4153(a) in pertinent part states:

"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:

...(2) for the office of...candidate for local office, $500 for each primary election...and an equal amount for each general election...."

In applying this subsection to your question, because this is a new election, separate and apart from the recent city election, each candidate running for a Unified Government position would be permitted to receive a maximum of $500 from each contributor in the Special Primary Election period, and another $500 from each contributor in the Special General Election period.

Turning to your second question, candidates seeking these positions must file the appointment of treasurer or candidate committee form (K.S.A. 25-4144) and pay the $30.00 candidate report fee (K.S.A. 1996 Supp. 25-4119f(3)). If the candidates have previous campaign accounts open, they may terminate those accounts and transfer the balance to the new campaign accounts as provided in K.S.A. 25-4157.

In closing, we do note that each candidate will be required to file either an affidavit of intent to expend and receive less than $500 (K.S.A. 25-4173) or file the appropriate receipts and expenditures reports (K.S.A. 25-4148) on the dates specified by those particular statutes.

Sincerely,

Diane Gaede, Chairwoman

By Direction of the Commission

DG:WCS:dlw

Return to opinion page.

January 23, 1997

Opinion No. 1997-03

J. Michael Haskin
Treasurer, Hougland for Senate
PO Box 413
Olathe, Kansas 66051-0413

Dear Mr. Haskin:

This opinion is in response to your letter of January 13, 1997, in which you request an opinion from the Kansas Commission on Governmental Standards and Conduct concerning the Kansas Campaign Finance Act (K.S.A. 25-4142 et seq.).

FACTUAL STATEMENT

We understand you request this opinion in your capacity as treasurer for the Steve Hougland for State Senate campaign. You advise us that the candidate was unsuccessful in his bid for the Kansas Senate. He would now like to run for the Olathe School Board, and has approximately $1700 in his Senate campaign account that he would like to transfer into the school board campaign. The Olathe School Board is a local elective office, as defined by K.S.A. 25-901, not under the jurisdiction of the Kansas Campaign Finance Act (K.S.A. 25-4142 et seq.).

QUESTION

Based on these facts, you ask us the following questions:

1. Does the Kansas Campaign Finance Act prohibit a candidate, after losing an election, from transferring his or her excess campaign funds to a campaign account for a local elective office not under the purview of the Act?

2. If permissible, what procedure should be used to transfer the funds?

OPINION

Nothing in the Kansas Campaign Finance Act prohibits a candidate, after losing an election, from transferring his or her excess campaign funds to a

campaign account for a local elective office not under the purview of the Act.

Turning to your second question, the candidate should file the appropriate forms to become a candidate for school board, then file a receipts and expenditures report with the Secretary of State's Office terminating the Senate account and showing the money being transferred into the school board account. Please refer to K.S.A. 25-904 for guidance as to what reports must be filed by a candidate for the school board.

In closing, we note that under K.S.A. 25-4153(f) political funds collected and subject to the provisions of the Kansas Campaign Finance Act could not be transferred to a campaign account for a federal elective office.

Sincerely,

Diane Gaede, Chairwoman

By Direction of the Commission

DG:WCS:dlw

April 18, 2002

Opinion No. 2002-09

Kelly Levi
Campaign Manager
Stovall/Glasscock Republican Leadership 2002
P.O. Box 4402
Topeka, Kansas 66604-0402

Dear Ms. Levi:

This opinion is in response to your letter of April 15, 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 Campaign Manager for the Stovall/Glasscock Republican Leadership 2002 campaign (S/G Campaign). You have explained that in July of 2001, Kent Glasscock (Glasscock) announced his candidacy for Governor, appointed a treasurer, and transferred the funds remaining in his Glasscock for State Representative campaign account into his new Glasscock for Governor campaign account.

In November of 2001, Carla Stovall (Stovall) and Glasscock announced their candidacy for the offices of Governor and Lieutenant Governor respectively. At this time, Stovall transferred the $4,184.06 in campaign funds remaining in her Stovall for Attorney General campaign account to the S/G Campaign account and Glasscock transferred the $129,737.74 remaining in his Glasscock for Governor account to the S/G Campaign account.

On April 15, 2002, Stovall announced her intent to withdraw as a Gubernatorial candidate.

QUESTION:

May the campaign funds contributed to the Stovall/Glasscock for Governor campaign be used in any subsequent Glasscock for Governor campaign?

OPINION:

The Kansas statutes establish that the candidates for Governor and Lieutenant Governor are to be nominated and elected jointly. (K.S.A. 25-4003). In addition, K.S.A. 25-4144 provides that the candidate for Governor shall carry out the requirements and responsibilities of the candidate campaign under the Campaign Finance Act, for the "pair of candidates." The Commission notes that the Kansas

Campaign Finance Act contemplates that the candidates for Governor and Lieutenant Governor are in fact separate candidates running a joint campaign. They are not considered a single candidate.

K.A.R. 19-22-1 discusses the transfer of funds from one campaign account to another. It states in pertinent part:

> ". . .the carryover of funds or inventory by a candidate, [or] candidate committee . . . or the transfer thereof to a bona fide successor committee or candidacy does not constitute a contribution."

Pursuant to this regulation and previous opinions of this Commission (see Commission opinions 1997-03, 1997-16), it is clear that candidates may transfer campaign funds to a bona fide successor committee or candidacy without consideration of the campaign contribution limits. Therefore, a candidate for Governor or a candidate for Lieutenant Governor may transfer their share of the joint campaign funds to their bona-fide successor campaign.

In determining their proportionate share, the Commission now determines that the duty is upon the treasurer (see Commission opinion 1993-40) to make a good faith estimate of what portion of the campaign funds belong to each candidate. For guidance, the Commission notes that this determination could be based upon the percentage of the amount brought to the campaign by each party, a percentage based upon the amount of campaigning each of the two parties did, a classification of which contributions were intended for each candidate, or on any other reasonable basis upon which the treasurer can discern what portion of the money belongs to each of the candidates. It is possible that each candidate could get one-half of the money if the treasurer objectively and in good faith believed that the contributions were intended to equally support both candidates, or that a combination of these rationales could be applied.

It should be noted however, that in most situations, one candidate could not take all of the money even if the two candidates were in agreement. K.S.A. 25-4157a(c) prohibits one candidate from giving contributions to another candidate. It states in pertinent part:

"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."

Therefore, when one member of the Governor/Lieutenant Governor team leaves the campaign, the treasurer must determine the proportionate share of the campaign funds to which each candidate is entitled. If one of the candidates does not wish to transfer this money to a successor campaign account, he or she must follow the proscriptions in K.S.A. 25-4157a(d) with regard to the disposal of campaign funds upon the termination of a campaign.

Sincerely,

Daniel Sevart, Chairman

2-9

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 Sevart, 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 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.

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?

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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 Sevart, Chairman
By Direction of the Commission

DS:VMG:dlw

June 19, 2003

Opinion No. 2003-18

John T. Frederick
Government Relations Manager
The Boeing Company
P.O. Box 7730, MC K12-05
Wichita, Kansas 67277-7730

Dear Mr. Frederick:

This opinion is in response to your letter of June 6, 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 in your capacity as the Government Relations Manager for the Boeing Company (Boeing). You have provided us with the following hypothetical scenario:

A contribution is made to an incumbent candidate for the state senate in the primary election cycle beginning January 1, 2001 and running through the day of the primary election in 2004. During this primary election cycle, the candidate announces that he is running for Governor, closes his senate campaign account and transfers all of that money to his gubernatorial campaign account pursuant to K.A.R. 19-22-1. The candidate is not elected governor and remains in the Senate. The gubernatorial campaign account holds a negative account balance, and the candidate has not opened a new senate campaign account.

QUESTIONS:

1. If the candidate opens a senate campaign account, what amount can now be given to his senate campaign during this primary election cycle?

2. What amount can now be given to retire the debt from the gubernatorial campaign?

OPINION:

K.A.R. 19-30-4 applies to the allocation of contributions when a candidate runs for a different office than that originally sought. It states in pertinent part:

> "When during an election period a candidate decides to seek state or local office other than that originally anticipated or sought in the preceding election, all contributions received during the election period shall be attributed to the individual's contributions limits for the office finally sought."

Although the contribution given in 2001 was originally given to the senate campaign during the senatorial primary election, because the candidate closed his senate campaign account and transferred all of that money to his 2002 gubernatorial campaign account pursuant to K.A.R. 19-22-1, the contribution was allocated to the gubernatorial primary election.

Pursuant to K.S.A. 25-4149, the senatorial primary election period started January 1, 2001 and will run through the day of the primary election in 2004. Because your original contribution was allocated to the gubernatorial campaign, you have not a made a contribution to this candidates' senatorial primary election. Therefore, if the candidate were now to leave his gubernatorial account open and, at the same time, open a new senatorial campaign account, you would be able to give this candidate up to $1,000.00 towards his senatorial primary election. See K.S.A. 25-4153.

With regard to the gubernatorial campaign, pursuant to K.S.A. 25-4149, the general election period ended December 31, 2002, and the new primary election cycle began on January 1, 2003 and will run until the day of the primary election in 2006. Therefore, if the candidate chooses to leave open his gubernatorial campaign account, you may contribute up to $2000.00 towards his gubernatorial primary election. See K.S.A. 25-4153. Please note that it does not matter that the candidate uses this money to reduce the debt from the previous election or whether he intends to run again for governor.

Sincerely,

Daniel Sevart, Chairman
By Direction of the Commission

DS:VMG:dlw

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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 Sevart, Chairman
By Direction of the Commission

DS:VMG:dlw

June 19, 2003

Opinion No. 2003-18

John T. Frederick
Government Relations Manager
The Boeing Company
P.O. Box 7730, MC K12-05
Wichita, Kansas 67277-7730

Dear Mr. Frederick:

This opinion is in response to your letter of June 6, 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 in your capacity as the Government Relations Manager for the Boeing Company (Boeing). You have provided us with the following hypothetical scenario:

A contribution is made to an incumbent candidate for the state senate in the primary election cycle beginning January 1, 2001 and running through the day of the primary election in 2004. During this primary election cycle, the candidate announces that he is running for Governor, closes his senate campaign account and transfers all of that money to his gubernatorial campaign account pursuant to K.A.R. 19-22-1. The candidate is not elected governor and remains in the Senate. The gubernatorial campaign account holds a negative account balance, and the candidate has not opened a new senate campaign account.

QUESTIONS:

1. If the candidate opens a senate campaign account, what amount can now be given to his senate campaign during this primary election cycle?

2. What amount can now be given to retire the debt from the gubernatorial campaign?

OPINION:

K.A.R. 19-30-4 applies to the allocation of contributions when a candidate runs for a different office than that originally sought. It states in pertinent part:

> "When during an election period a candidate decides to seek state or local office other than that originally anticipated or sought in the preceding election, all contributions received during the election period shall be attributed to the individual's contributions limits for the office finally sought."

Although the contribution given in 2001 was originally given to the senate campaign during the senatorial primary election, because the candidate closed his senate campaign account and transferred all of that money to his 2002 gubernatorial campaign account pursuant to K.A.R. 19-22-1, the contribution was allocated to the gubernatorial primary election.

Pursuant to K.S.A. 25-4149, the senatorial primary election period started January 1, 2001 and will run through the day of the primary election in 2004. Because your original contribution was allocated to the gubernatorial campaign, you have not a made a contribution to this candidates' senatorial primary election. Therefore, if the candidate were now to leave his gubernatorial account open and, at the same time, open a new senatorial campaign account, you would be able to give this candidate up to $1,000.00 towards his senatorial primary election. See K.S.A. 25-4153.

With regard to the gubernatorial campaign, pursuant to K.S.A. 25-4149, the general election period ended December 31, 2002, and the new primary election cycle began on January 1, 2003 and will run until the day of the primary election in 2006. Therefore, if the candidate chooses to leave open his gubernatorial campaign account, you may contribute up to $2000.00 towards his gubernatorial primary election. See K.S.A. 25-4153. Please note that it does not matter that the candidate uses this money to reduce the debt from the previous election or whether he intends to run again for governor.

Sincerely,

Daniel Sevart, Chairman
By Direction of the Commission

DS:VMG:dlw

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Return to opinion page.

May 6, 1997

Opinion No. 1997-17

The Honorable David Haley
Kansas State Representative, 34th District
936 Cleveland Avenue
Kansas City, Kansas 66101

Dear Representative Haley:

This opinion is in response to your letter of May 3, 1997, in which you request an opinion from the Kansas Commission on Governmental Standards and Conduct concerning the Kansas Campaign Finance Act (K.S.A. 25-4142 et seq.). We note at the outset that the Commission's jurisdiction is limited to the application of K.S.A. 25-4142 et seq., and whether some other statutory system, common law theory or agency rule and regulation applies to your inquiry is not covered by this opinion.

FACTUAL STATEMENT

We understand 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 in Wyandotte County. You further advise us that you would want to use your existing legislative campaign funds for this election.

QUESTION

Is it permissible under the Kansas Campaign Finance Act (K.S.A. 25-4142 et seq.) for a state legislator to use his or her own legislative campaign funds to run for a county office?

OPINION

Nothing in the Kansas Campaign Finance Act prohibits a state legislator from using his or her own legislative campaign funds to run for a county office. Therefore, it would be permissible for you to use your existing campaign funds to run for office in Wyandotte County.

In closing, we note that in KCGSC Opinion No. 97-16, the Commission opined that individuals running for Wyandotte County Unified Government positions must comply with the provisions of the Kansas Campaign Finance Act. We have attached a copy of that opinion for your use.

Sincerely,

Diane Gaede, Chairwoman

By Direction of the Commission

DG:WCS:dlw

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April 18, 2002

Opinion No. 2002-09

Kelly Levi
Campaign Manager
Stovall/Glasscock Republican Leadership 2002
P.O. Box 4402
Topeka, Kansas 66604-0402

Dear Ms. Levi:

This opinion is in response to your letter of April 15, 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 Campaign Manager for the Stovall/Glasscock Republican Leadership 2002 campaign (S/G Campaign). You have explained that in July of 2001, Kent Glasscock (Glasscock) announced his candidacy for Governor, appointed a treasurer, and transferred the funds remaining in his Glasscock for State Representative campaign account into his new Glasscock for Governor campaign account.

In November of 2001, Carla Stovall (Stovall) and Glasscock announced their candidacy for the offices of Governor and Lieutenant Governor respectively. At this time, Stovall transferred the $4,184.06 in campaign funds remaining in her Stovall for Attorney General campaign account to the S/G Campaign account and Glasscock transferred the $129,737.74 remaining in his Glasscock for Governor account to the S/G Campaign account.

On April 15, 2002, Stovall announced her intent to withdraw as a Gubernatorial candidate.

QUESTION:

May the campaign funds contributed to the Stovall/Glasscock for Governor campaign be used in any subsequent Glasscock for Governor campaign?

OPINION:

The Kansas statutes establish that the candidates for Governor and Lieutenant Governor are to be nominated and elected jointly. (K.S.A. 25-4003). In addition, K.S.A. 25-4144 provides that the candidate for Governor shall carry out the requirements and responsibilities of the candidate campaign under the Campaign Finance Act, for the "pair of candidates." The Commission notes that the Kansas

Campaign Finance Act contemplates that the candidates for Governor and Lieutenant Governor are in fact separate candidates running a joint campaign. They are not considered a single candidate.

K.A.R. 19-22-1 discusses the transfer of funds from one campaign account to another. It states in pertinent part:

> ". . .the carryover of funds or inventory by a candidate, [or] candidate committee . . . or the transfer thereof to a bona fide successor committee or candidacy does not constitute a contribution."

Pursuant to this regulation and previous opinions of this Commission (see Commission opinions 1997-03, 1997-16), it is clear that candidates may transfer campaign funds to a bona fide successor committee or candidacy without consideration of the campaign contribution limits. Therefore, a candidate for Governor or a candidate for Lieutenant Governor may transfer their share of the joint campaign funds to their bona-fide successor campaign.

In determining their proportionate share, the Commission now determines that the duty is upon the treasurer (see Commission opinion 1993-40) to make a good faith estimate of what portion of the campaign funds belong to each candidate. For guidance, the Commission notes that this determination could be based upon the percentage of the amount brought to the campaign by each party, a percentage based upon the amount of campaigning each of the two parties did, a classification of which contributions were intended for each candidate, or on any other reasonable basis upon which the treasurer can discern what portion of the money belongs to each of the candidates. It is possible that each candidate could get one-half of the money if the treasurer objectively and in good faith believed that the contributions were intended to equally support both candidates, or that a combination of these rationales could be applied.

It should be noted however, that in most situations, one candidate could not take all of the money even if the two candidates were in agreement. K.S.A. 25-4157a(c) prohibits one candidate from giving contributions to another candidate. It states in pertinent part:

"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."

Therefore, when one member of the Governor/Lieutenant Governor team leaves the campaign, the treasurer must determine the proportionate share of the campaign funds to which each candidate is entitled. If one of the candidates does not wish to transfer this money to a successor campaign account, he or she must follow the proscriptions in K.S.A. 25-4157a(d) with regard to the disposal of campaign funds upon the termination of a campaign.

Sincerely,

Daniel Sevart, Chairman

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Return to opinion page.

January 23, 1997

Opinion No. 1997-03

J. Michael Haskin
Treasurer, Hougland for Senate
PO Box 413
Olathe, Kansas 66051-0413

Dear Mr. Haskin:

This opinion is in response to your letter of January 13, 1997, in which you request an opinion from the Kansas Commission on Governmental Standards and Conduct concerning the Kansas Campaign Finance Act (K.S.A. 25-4142 et seq.).

FACTUAL STATEMENT

We understand you request this opinion in your capacity as treasurer for the Steve Hougland for State Senate campaign. You advise us that the candidate was unsuccessful in his bid for the Kansas Senate. He would now like to run for the Olathe School Board, and has approximately $1700 in his Senate campaign account that he would like to transfer into the school board campaign. The Olathe School Board is a local elective office, as defined by K.S.A. 25-901, not under the jurisdiction of the Kansas Campaign Finance Act (K.S.A. 25-4142 et seq.).

QUESTION

Based on these facts, you ask us the following questions:

1. Does the Kansas Campaign Finance Act prohibit a candidate, after losing an election, from transferring his or her excess campaign funds to a campaign account for a local elective office not under the purview of the Act?

2. If permissible, what procedure should be used to transfer the funds?

OPINION

Nothing in the Kansas Campaign Finance Act prohibits a candidate, after losing an election, from transferring his or her excess campaign funds to a

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campaign account for a local elective office not under the purview of the Act.

Turning to your second question, the candidate should file the appropriate forms to become a candidate for school board, then file a receipts and expenditures report with the Secretary of State's Office terminating the Senate account and showing the money being transferred into the school board account. Please refer to K.S.A. 25-904 for guidance as to what reports must be filed by a candidate for the school board.

In closing, we note that under K.S.A. 25-4153(f) political funds collected and subject to the provisions of the Kansas Campaign Finance Act could not be transferred to a campaign account for a federal elective office.

Sincerely,

Diane Gaede, Chairwoman

By Direction of the Commission

DG:WCS:dlw