

MINUTES OF THE SENATE ELECTIONS AND LOCAL GOVERNMENT

The meeting was called to order by Chairman Tim Huelskamp at 1:37 P.M. on February 9, 2005 in Room 423-S of the Capitol.

All members were present.

Committee staff present: Martha Dorsey, Kansas Legislative Research Department
Mike Heim, Kansas Legislative Research Department
Ken Wilke, Revisor of Statutes
Janet Engel, Committee Secretary

Conferees appearing before the committee:

Robert Stern, Center for Government Studies
Carol Williams, Ethics Commission
Shelby Smith

Others attending: See attached list.

Staff note: Topeka Channel 13 TV news interviewed Robert Stein before the meeting and recorded the full meeting. Kansas Public Radio recorded Mr. Stein's presentation.

Minutes Approval

Minutes for February 12, 18, 20, 25, 26, and 27 were provided in meeting packets for approval. At the end of the meeting, Senator Donovan moved and Senator Pyle seconded to approve the minutes as provided. The motion carried.

Hearing on SB64 - Campaign finance; reporting requirements for electioneering communications.

Ken Wilke, committee staff, described the bill and fielded questions. It corresponds to the fifth recommendation from the Ethics Commission. Definitions in the bill are very similar to those in the federal act. The fiscal note was provided in the meeting packets.

Informational conferee:

Robert Stern, who was invited by Carol Williams, made a presentation. His written statement (Attachment 1) includes suggested amendments.

Proponents:

Carol Williams provided testimony (Attachment 2) and answered questions.

Shelby Smith provided testimony (Attachment 3).

Opponents: There were no opponents.

Senator Huelskamp closed the hearing.

Hearing on SB 66 - Campaign finance; reports by certain committees shall include names of candidates supported or opposed.

The hearing on SB66 which was scheduled for today will be first thing on the agenda tomorrow. Attachments intended for this hearing will be including with minutes for the hearing.

Subcommittee on SB80 - Open records; public agency; certain records excluded.

Chairman Huelskamp appointed Senator O'Connor as chair and Senators Betts and Peterson to serve on this subcommittee.

Additional information

Brad Bryant from the Secretary of State's office provided information to the committee which was provided in the meeting packets as (Attachment 4).

Closing

The meeting was adjourned at 2:31 p.m.

Statement of Robert M. Stern
President, Center for Governmental Studies, Los Angeles
February 9, 2005

My name is Bob Stern, President and General Counsel of the Center for Governmental Studies, a nonpartisan research organization located in Los Angeles. The Center is funded by national foundations and has drafted a Model Campaign Disclosure Law that has been distributed throughout the country.

I helped write California's disclosure law in 1974, was the first general counsel to the California equivalent of your ethics commission, and was past Chair of the Council on Governmental Ethics Laws, an organization consisting of nearly all the ethics, campaign finance, and freedom of information agencies in the United States and Canada. Also I was a legislative staff person for two years.

I have been assisting agencies, public interest groups, and legislators in improving their state campaign disclosure laws. Last year I appeared before the Oregon Secretary of State's campaign finance Task Force; and a few weeks ago, I testified before the Senate Elections Committee in Washington State.

Electioneering communication or issue advertising is a relatively new tactic by groups that are trying to influence the outcome of an election but are not disclosing the source of their funding. These groups are spending thousands, sometimes hundreds of thousands of dollars, just before an election discussing the merits (but usually the demerits) of candidates. Many of these groups are reluctant to disclose who funds them and how much they spend in advertising. They claim that they don't have file disclosure statements because their ads do not use the magic words of "vote for," "vote against" or "elect."

A growing number of states and the United States Congress have enacted legislation requiring such groups to disclose who they are, who is funding them, and how much they are spending. The Congressional legislation was part of the McCain-Feingold legislation enacted by Congress and signed by President Bush a few years ago. Groups specifically challenged the Congressional provisions dealing with issue ads saying that the law violated their First Amendment free speech rights. In a vote of five to four, the U.S. Supreme Court ruled that such a provision was constitutional.

The bill before you is similar to legislation enacted by the U.S. Congress and several states. It requires disclosure by persons who spend money mentioning the names of candidates if such communications occur 30 days before the primary and 60 days before the general election.

While the bill as written addresses the issue ad disclosure problems that occurred in your election, I have a number of suggestions that might improve the bill.

1. On page 1, line 13, delete “makes or contracts to make an expenditure” and substitute “spends or contracts to spend”. It is my understanding the definition of “expenditure” in your statute requires a group to expressly advocate the election or defeat of a candidate. An issue ad by definition does not do so. Thus, you need to delete the reference to expenditures in your proposal.

2. On page 1, line 14, raise the \$300 threshold to \$500, which is the threshold for committees filing reports under Section 25-4175.

3. On page 1, line 19, require the occupations of contributors of \$150 or more to be listed, such as they are for candidates and committees.

4. On page 1, line 23, delete “the expenditure” and add “a payment of \$50 or more”. You should again delete the expenditure term and also have the same threshold for a payment as is required for committee payments. Not every payment of \$1 or more should be reported.

I hope that my comments have been helpful to the committee, and of course, I am available to answer any questions about the bill or my suggested amendments.

**GOVERNMENTAL ETHICS COMMISSION**

www.accesskansas.org/ethics

**Testimony before Senate Committee On
Elections and Local Government
in Support of Senate Bill 64****by Carol Williams, Executive Director****February 9, 2005**

Senate Bill 64 is a recommendation made by the Governmental Ethics Commission in its 2005 Annual Report and Recommendations.

The mission of the Kansas Governmental Ethics Commission is to provide the public with timely and accurate campaign finance information for knowledgeable participation in government and the electoral process. In fulfilling its mission, the Commission believes the public has a right to know the source of funding and the amount expended by any individual, committee, corporation, organization or association that expends money on any issue ad (electioneering communication) that clearly identifies a candidate. An issue ad does not directly urge a voter to vote for or against a candidate. The ad usually discusses an issue and provides a candidate's support or opposition on that issue. The United States Supreme Court, in the case of *McConnell v. FEC*, 124 S.Ct.619 (2003), upheld the constitutionality of disclosure of issue ads made right before an election.

Senate Bill 64 would require any individual, committee, corporation, organization, association, or partnership that spends \$300 or more per calendar year for any electioneering communication (issue ad) to file a report with the Secretary of State on the same date candidates, party committees, and political committees are required to file receipts and expenditures reports. Such report would include the name of the clearly identified candidate mentioned in the electioneering communication, the name and address of each individual or other entity that contributes \$50 or more per calendar year to such person for the communication, and the name and address of the vendor who is paid or contracted to be paid for such communication. Any electioneering communication that occurs during the eleven days preceding the primary or

general election will be required to be reported within 24 hours of making or contracting to make an expenditure for such communication.

Electioneering communication would be defined in the Campaign Finance Act to mean any communication broadcast by television or radio, printed in a newspaper or on a billboard, directly mailed or delivered by hand to personal residences or otherwise distributed that unambiguously refers to any clearly identified candidate within 30 days before a primary election or 60 days before a general election to an audience that includes members of the electorate for such public office. An electioneering communication would not include any news article, editorial, or letter to the editor printed in a newspaper, magazine or other periodical or any editorial endorsement or opinion aired by a broadcast facility so long as the newspaper, broadcast facility, etc., is not owned or controlled by a candidate or political party. In addition, an electioneering communication would not include any communication by a person made in the regular course and scope of their business, by a membership organization solely to its members and their families, any communication made to promote a candidate debate or forum, any communication made as part of a nonpartisan activity to encourage individuals to vote or register to vote, or any communication that refers to any candidate only as part of the popular name of a bill or statute.

After careful review of Senate Bill 64, the following amendments to SB 64 are recommended: 1) on lines 13 and 14 on page 1, change “makes or contracts to make an expenditure” to “spends or contracts to spend”; 2) on line 25 on page 1, change the words “of the expenditure” to “spent or contracted to be spent”; and 3) on line 5 on page 2, change the words “making or contracting to make an expenditure” to “spending or contracting to spend funds” Expenditure is defined in the Campaign Finance Act as “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”. An issue ad or electioneering communication does not expressly advocate the election or defeat of a clearly identified candidate; therefore, the word “expenditure” should not be tied to spending made for issue ads.

The Commission also recommends that the bill be amended to require the occupation of any individual who makes a contribution to an organization, association, or committee that

makes an electioneering communication in an amount of over \$150. This is consistent with the threshold for reporting the occupation of a contributor in the Campaign Finance Act.

Requiring issue ad disclosures will provide voters in Kansas with information on who is financing these ads and how much they are spending on them. The Commission urges your support of Senate Bill 64.

SENATE BILL No. 64

By Committee on Elections and Local Government

1-20

9 AN ACT concerning campaign finance; pertaining to electioneering
10 communications.

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

12 Section 1. (a) Any person who ~~makes or contracts to make an ex-~~
13 ~~penditure in an amount of~~ \$300 or more per calendar year for any elec-
14 tioneering communication shall submit as required by subsection (b). For
15 each electioneering communication, the report shall include:

[spends or contracts to spend

16 (1) The name of the clearly identified candidate mentioned in the
17 electioneering communication.

18 (2) The name, street address, city, state and zipcode of each individ-
19 ual or other entity that contributes \$50 or more per year to such person
20 for an electioneering communication.

21 (3) The name, street address, city, state and zipcode of the vendor to
22 whom the expenditure for such electioneering communication is made
23 or contracted to be made.

24 (4) ~~The amount of the expenditure on such electioneering commu-~~
25 ~~nication is made or contracted to be made.~~ If the person making the
26 electioneering communication is an individual, such reports shall also in-
27 clude the occupation and employer of such individual. Reports required
28 by this section shall be in addition to any other reports required by law.

[spent or contracted to be spent

29 (b) (1) (A) For an electioneering communication concerning a candi-
30 didate for state office, other than an officer elected on a state-wide basis,
31 the report required by subsection (a) shall be filed in both the office of
32 the secretary of state and in the office of the county election officer of
33 the county in which the candidate is a resident.

34 (B) For an electioneering communication concerning a candidate for
35 state-wide office, the report required by subsection (a) shall be filed only
36 with the secretary of state.

37 (C) For an electioneering communication concerning a candidate for
38 local office, the report required by subsection (a) shall be filed in the
39 office of the county election officer of the county in which the name of
40 the candidate is on the ballot.

41 (2) Except as required by paragraph (3), each report required by sub-
42 section (a) shall be filed in time to be received in the offices required in
43

2-4

2-5

1 accordance with the times set forth in K.S.A. 25-4148 and amendments
2 thereto.

3 (3) For any electioneering communication occurring during the 11
4 days preceding the election, the report required by subsection (a) shall
5 be filed within 24 hours of ~~making or contracting to make an expenditure~~
6 for such electioneering communication.

spending or contracting to spend funds

7 (c) For the purposes of this section:

8 (1) "Electioneering communication" means any communication
9 broadcast by television or radio, printed in a newspaper or on a billboard,
10 directly mailed or delivered by hand to personal residences or otherwise
11 distributed that:

- 12 (A) Unambiguously refers to any clearly identified candidate;
- 13 (B) is broadcast, printed, mailed, delivered or distributed within 30
14 days before a primary election or 60 days before a general election;
- 15 (C) is broadcast to, printed in a newspaper distributed to, mailed to,
16 delivered by hand to, or otherwise distributed to an audience that includes
17 members of the electorate for such public office.

18 (2) "Electioneering communication" does not include:

- 19 (A) Any news articles, editorial endorsements, opinion or commen-
20 tary writings, or letters to the editor printed in a newspaper, magazine or
21 other periodical not owned or controlled by a candidate or political party;
- 22 (B) any editorial endorsements or opinions aired by a broadcast fa-
23 cility not owned or controlled by a candidate or political party;
- 24 (C) any communication by persons made in the regular course and
25 scope of their business or any communication made by a membership
26 organization solely to members of such organization and their families;
- 27 (D) any communication that refers to any candidate only as part of
28 the popular name of a bill or statute;
- 29 (E) any communication made solely to promote a candidate debate
30 or forum that is made by or on behalf of the person sponsoring such
31 debate or forum; or
- 32 (F) any communication made as part of a nonpartisan activity de-
33 signed to encourage individuals to vote or register to vote.

34 Sec. 2. The provisions of this act shall be part of and supplemental
35 to the campaign finance act.

36 Sec. 3. This act shall take effect and be in force from and after its
37 publication in the statute book.

TESTIMONY – CAMPAIGN FINANCE

Shelby Smith

SENATE ELECTIONS COMMITTEE

January 25, 2005

I'm testifying on behalf of an Ad Hoc Lobbyist Campaign Finance Committee (John Bottenberg, Dina Fisk, Jim Maag, John Pinegar) in support for the recommendations of the Governmental Ethics Commission (GEC). We're here as private citizens representing only our individual concerns and no one else.

Our singular interest is disclosure.

Kansans enjoys a clean and otherwise open culture of responsible and responsive government. A big window of opportunity is now open to protect that integrity and to correct a glaring failure in our campaign finance laws. We received a failing grade from the Center for Governmental Studies. The fact is, current Kansas law is a bit of a joke. We owe Kansas taxpayers timely and accurate information about the election process, the basic exercise of our democracy.

We're especially emphatic in our support of SB65 (Recommendation 2) and SB68 (Rec. 3) which will at last plug the black hole of non-disclosure in the eleven days before primary elections and the eleven days preceding the general election. Under current Kansas law, contributions and expenditure made during the critical all important campaign advertising days are not made public until 90 days after the primary or 75 days after the general election. Disclosure on this schedule is worthless.

We lobbyist are also strong in our support of SB64 (Rec. 5) which should remove the shadowy cash from Issue Ads which hide the identity of groups and individuals who seek to influence, anonymously, the election or defeat of a candidate. This reform requires the sponsors of Issue Ads which identifies a candidate by name, or picture or position to file a report as must all PACs. The intent here is not to restrict or eliminate 527s, but rather full disclosure of their politics and money.

Our support of the Commission's recommendations arises again and again from the fundamental need for disclosure, to wit: SB66 (Rec. 1) requires money spent on behalf of a candidate be identified in the Receipts and Expenditure Report. Then SB67 (Rec. 4) demands the disclosure of funding sources for recorded telephone bank messages in the same way that the sponsors for television, radio, and print messages must be identified.

Additionally, we recommend mandatory campaign electronic filing. The Secretary of State and the Governmental Ethics Commission are encouraged to come forward with a Joint Proposal to accept these filings and to make them accessible with posting on the Secretary of State's website.

Governor Sebelius' State of the State address, January 10, 2005, clearly shows her solid support for an overhaul of our campaign finance laws. We commend her leadership on this issue. We also recognize the fact the diverse nine member Commission brought forth all five recommendations on unanimous votes. The time is now.

Senate Elections & Local Govt.

Date: 2 / 9 / 2005

Attachment 3

RON THORNBURGH
Secretary of State



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STATE OF KANSAS

Sen. Huelskamp:

When I was giving a HAVA update to the Senate Committee on Elections and Local Government on January 20, the committee expressed interest in having more detail on the voter registration project we're pursuing under HAVA.

Attached are copies of a very brief outline that provides more detail than I provided during my testimony. If you think the committee would like more, I can provide something else.

Brad Bryant

ELECTION VOTER INFORMATION SYSTEM

To meet the requirements of the Help America Vote Act (HAVA), the State of Kansas is adopting an Election Voter Information System. The system is designed to serve as a centralized, statewide, real-time voter registration and election management solution.

The Kansas Secretary of State's Office and county election officers will develop the statewide voter registration database to be in full operation for the 2006 cycle. The new system will be an automated, interactive system that will provide a number of significant advantages, including:

- Streamlining of the state's voter registration processes, including registration forwarding capabilities that will move voters between counties
- Reduce the number of duplicate voter registration records in the system
- Improved transmission of DMV "Motor Voter" registrations and faster transmission of information from state agencies to local election offices
- Enhanced security of election registration data and timely, accurate registration validation checks
- Significant savings through the reduction of paperwork and the elimination of time consuming, often redundant, state and local record maintenance activities
- A statewide election calendar that can also be used to schedule local election dates

In addition to voter registration functions, the Election and Voter Information System will offer the following array of election management features:

- Election Night reporting capabilities, including the ability to quickly analyze voting and turnout data
- Assistance with advanced voting ballot processing
- Petition and candidate tracking
- Polling place instructions and contact information
- Election worker tracking and recruiting functions
- Election planning tools

The Election Voter Information System will enable Kansas to standardize many additional election forms and procedures used throughout the state.