

MINUTES OF THE SELECT COMMITTEE ON CONTESTED ELECTIONS

The meeting was called to order by Chairman Mike O'Neal at 5:00 P.M. on January 30, 2007 in Room 313-S of the Capitol.

All members were present except Representative Michael Peterson.

Committee staff present:

Jerry Ann Donaldson, Kansas Legislative Research Department
Martha Dorsey, Kansas Legislative Research Department
Mary Torrence, Revisor of Statutes
Gordon Self, Assistant Revisor of Statutes
Cindy O'Neal, Committee Assistant

Chairman O'Neal stated that the committee would meet the following day to put in place a set of rules. Staff provided a copy of the rules from the 2001 Select Committee on Election Contest. The Chairman asked that the committee look over them and be ready to discuss if they could adopt those rules or if there would need to be changes made.

The committee also received the following, which the Chairman requested the committee review:

- Memorandum from Norm Furse, dated 1/3/1995 regarding election contest procedures including legislative, constitutional and legal background. (Attachment 1)
- A copy of K.S.A. 25-1435 through 25-1452 regarding who may contest an election and the process which is to be used.
- Copies of the following Supreme Court Cases cited by the Johnson County District Court regarding elections:
 1. *Lambeth v. Levens*; addressed whether illegal ballots were cast and if votes that counted should be subtracted from the total number of certified votes for that specific candidate.
 2. *Cure and Aistrup v. Board of County Commissioners of Hodgeman County*; addressed the issue an election contest based on alleged violations of the statutory provisions governing advance voting.
 3. *The Legislative Coordinating Council v. The Secretary of Department of Administration and The Director of Accounts and Reports*; the case dealt with payment of court costs and attorney fees in an election contest for a seat in the Kansas House of Representatives.

The committee decided that reasonable access to the court file should be allowed by the members of the House of Representatives after the report of the committee is submitted.

The Chairman reminded the committee that the statutory purpose of the committee was to review the evidence and facts in the case and determine who the winner of the election should be and forward that recommendation to the full House of Representatives.

Representative Ward requested that the committee be limited to considering only evidence that was presented to the court and not consider any new evidence. Chairman O'Neal stated that he did not know what, if any, other type of information the committee might come across that it would need to review when trying to determine the outcome and decided against limiting what the committee could actually receive.

The committee requested a copy of the court transcript and actual exhibit file.

The committee agreed that there would be no communications with the contestee, contestant or their attorneys, so to limit any inappropriate outside pressure.

The committee meeting adjourned at 5:40 p.m. The next meeting was scheduled for January 31, 2007.

MEMORANDUM

From: Norm Furse, Revisor of Statutes

Date: January 3, 1995

Re: Election Contest Procedure

I. CONSTITUTIONAL AND LEGAL BACKGROUND.

- A. Kansas Constitution. Under the Kansas Constitution, article 2, section 8, "Each house shall be the judge of elections, returns and qualifications of its own members."
- B. Statutory procedure. K.S.A. 25-1434 et seq. provides the statutory procedure to contest an election. An election may be contested within five days after the certificate of election is issued under this statutory procedure.
- C. District judge hears contest. If the election contest involves the election of a member of the senate or the house of representatives of the state, a district court judge hears the contest under procedure set out in K.S.A. 25-1442 et seq.
- D. Votes cast for each candidate. When a contest is for the office of state senator or member of the house of representatives, K.S.A. 25-1451 specifies that "the only question to be tried by the court...shall be the question of what number of legally cast votes each of the candidates to the contested office received."
- E. Findings and records of proceedings. The statute directs the judge trying the proceedings to make findings of fact on the question of the number of votes each candidate received. The clerk of the district court then transmits all the evidence, files and records of the proceedings to the president of the senate or the speaker of the house of representatives, as appropriate to the election contest. See K.S.A. 25-1451.

II. LEGISLATIVE PROCEDURE.

- A. Appointment of select committee. K.S.A. 25-1451 provides

that in judging the "election, returns and qualifications of any member of the house of representatives or senate, in the absence of rules providing otherwise, the speaker or president shall appoint a select committee of equal numbers of members of the two parties...and shall also appoint the chairperson and vice chairperson of the select committee."

- B. Select committee functions. The select committee is charged with the following duties under K.S.A. 25-1451:
- (1) The select committee is to consider the files, records and evidence transmitted from the court;
 - (2) the select committee hears the contestant and contestee and their respective counsel;
 - (3) the select committee has the power of compulsory process;
 - (4) hearings of the select committee shall be open;
 - (5) the select committee is to report to the full house of the legislature which is to consider the matter not later than ten days after its appointment;
 - (6) the report of the select committee must be set for the special order of business within five legislative days from the date the report is made.
- C. Member access to the records. All members are to have access to files, records and evidence transmitted from the court "at such reasonable times" as determined by the full house of the legislature which is to consider the matter. See K.S.A. 25-1451.
- D. Special order of business. The report of the select committee is set for the special order of business. When the time of the special order of business arrives, all the members of the house of the legislature which is to consider the matter, except the contestee, determine, after debate, the person who is the elected member.

III. THE 1991 WELLS--CHRISTENSEN-JONES ELECTION CONTEST.

- A. In 1990 Representative Elaine Wells won re-election to the House by two votes after a recount. Her opponent Karlen Christensen-Jones contested the election in district court

under the statutes setting out the procedure for election contests.

- B. Representative Wells was certified by the state board of canvassers as the member-elect from her district and was sworn in as a member of the House at the first regular session. This is consistent with the Kansas Supreme Court case of Rogers v. Shanahan, 221 Kan. 221, at p. 229, which states: "Our statutes provide that the Secretary of State shall, at both the preorganizational meeting and the first regular session, read the roll of members-elect as have been declared elected by the State Board of Canvassers. The filing of an election contest has no effect on this list." The determination of the state board of canvassers stands unless the appropriate branch of the legislature rules otherwise.
- C. The court file and evidence of the election contest proceeding was placed in the custody of the chief clerk of the House of Representatives. See attached Journal of the House, January 16, 1991, p. 48.
- D. Speaker Barkis appointed a select committee on election contest pursuant to the statute to review the matter. The House of Representatives authorized the Select Committee on Election Contest to fix reasonable times during which access to the court records of the election contest proceedings were made available to members of the House. See attached Journal of the House, January 17, 1991, pp. 49 and 50. The Revisor of Statutes Office was requested to hold the key to the room in which the records were kept and to accompany any legislator requesting to review the records during the period of review.
- E. The Select Committee on Election Contest reported its findings to the House on January 28, 1991. The committee found Representative Wells the winner of the election by three votes (not counting one unopened ballot and one ballot which was disputed). See attached Journal of the House, January 28, 1991, pp. 78 through 86 for the complete report.
- F. In accordance with law the matter was set for a special order of business on February 1, 1991. The report of the Select Committee on Election Contest was referred to the Committee on Rules and Journal for consideration of procedural matters

concerning the House debate of the select committee's report. See attached House Calendars for January 29, 1991, January 30, 1991, January 31, 1991, and February 1, 1991.

- G. On the day the matter was scheduled as a special order of business, Karlen Christensen-Jones withdrew her challenge and the matter became moot. See attached Journal of the House, February 1, 1991, pp. 102 and 103.

25-1448

ELECTIONS

cast for each of the parties to the contest, or for and against a question submitted, for each precinct that is recounted and report any disputed votes upon which the inspectors cannot agree.

History: L. 1978, ch. 138, § 14; July 1.

25-1448. Final determination of contest of person elected to office; disposition by court; applicability of section. Upon final determination of a contest of an election to an office by the court, after the time for appeal thereof specified in K.S.A. 25-1450, and amendments thereto, has expired, or in case of an appeal, upon the final judicial determination of the contest, if the contestant succeeds in the contest, the court may invalidate and revoke any election certificate which has been issued to the contestee, and the secretary of state or county election officer authorized to issue the certificate of election shall issue the certificate to the person the court finds is entitled thereto; except that in cases where the court has found that the contestant prevails in the contest on the grounds provided for in subsection (a), (b), (c) or (e) of K.S.A. 25-1436, and amendments thereto, then the court may order another election for such office to be held within 45 days after the date of such order or may make such other orders as the court deems appropriate. This section shall not apply to any contest of the office of state senator or member of the house of representatives.

History: L. 1978, ch. 138, § 15; L. 1985, ch. 121, § 2; March 28.

CASE ANNOTATIONS

1. Cited: law on voting absentee ballot for another (25-1124) applied. Lambeth v. Levens, 237 K. 614, 619, 702 P.2d 320 (1985).

25-1449. Final determination of contest of question submitted elections; disposition by court. Upon final determination of a contest of question submitted election by the court, after time for appeal thereof specified in K.S.A. 25-1450 has expired, or in case of appeal, the final judicial determination of the contest, if the court finds that the greatest number of valid votes were in favor of the question submitted the court shall order that the question submitted has carried and likewise if the court finds that the greatest number of valid votes were against the question submitted the court shall order that the question submitted did not carry, and the court shall make such additional orders as are appropriate.

History: L. 1978, ch. 138, § 16; July 1.

25-1450. Appeals; procedure. An appeal may be taken to the supreme court from the determination of the district court in any contest instituted under this act, other than contests involving the office of state senator or representative. The party appealing shall file in the district court a bond in such sum, not less than five hundred dollars (\$500) or such reasonable greater amount as the court may order, and with such sureties approved by the court, conditioned for the payment of all costs incurred by the respondent or respondents in case appellant fails on appeal. The notice of appeal shall be served upon the other party or parties and filed with the clerk of the district court no later than five days after the entry of the determination of the contest by the district court. The transcript of the case shall be certified and filed in the supreme court as soon as practicable and in any event within fifteen (15) days after filing of notice of appeal. The appeal shall be advanced for hearing as the supreme court may determine and it may be heard and determined summarily by the supreme court.

History: L. 1978, ch. 138, § 17; July 1.

25-1451. Final determination of contest of state representatives and senators; procedure before legislative body. (a) When a contest of election is for the office of state senator or member of the house of representatives, the only question to be tried by the court, notwithstanding any other provision of law, shall be the question of what number of legally cast votes each of the candidates to the contested office received. The judge trying the proceedings shall make findings of fact upon the question so tried. Further evidence upon the points specified in the notice, including but not limited to the question as to the eligibility of any person to office, shall be taken and preserved by the judge trying the contest, but the judge shall make no finding or conclusion thereon. The clerk of the district court shall transmit all the files and records of the proceedings with all the evidence taken to the president of the senate or the speaker of the house of representatives, as the case may be.

(b) In judging the election, returns and qualifications of any member of the house of representatives or senate, in the absence of rules providing otherwise, the speaker or president shall appoint a select committee of equal numbers of members of the two parties having the greatest number of members of the entire

senate or house of representatives as the case may be, and shall also appoint the chairperson and vice chairperson of the select committee. The select committee shall consider the files, records and evidence transmitted from the court and shall hear the contestant and contestee and their respective counsel. Such select committee shall have powers of compulsory process and laws applicable thereto shall apply, except that all hearings shall be open. The select committee shall report to the full house of representatives or senate not later than ten days after its appointment. Such report shall be set for the special order of business within five legislative days from the date the report is made. All members shall have access to files, records and evidence transmitted from the court at such reasonable times as determined by the full house of representatives or senate. When the time of the special order of business arrives the full house of representatives or senate except the contestee shall determine, after debate thereon, the person who is the elected member.

History: L. 1978, ch. 138, § 18; July 1.

25-1452. Costs of contests of elections. If the election be confirmed or the contest be dismissed, judgment shall be rendered against the contestant for all costs. No costs shall be rendered against the contestee unless found responsible for any of the provisions in (a) through (f) of K.S.A. 25-1436. The court, in the interests of justice may waive any costs assessed pursuant to this section in which case the costs shall be paid by the state from any appropriations therefor. Payment by the state shall be made by the director of accounts and reports upon voucher therefor approved by the clerk of the district court.

History: L. 1978, ch. 138, § 19; July 1.

Article 15.—CONTEST OF QUESTION SUBMITTED ELECTIONS

25-1501.

History: L. 1871, ch. 79, § 1; R.S. 1923, 25-1501; L. 1972, ch. 136, § 1; Repealed, L. 1978, ch. 138, § 22; July 1.

CASE ANNOTATIONS

1. Action pending under act of 1869 not affected by repeal. *Gilleland v. Schuyler*, 9 K. 569.
2. Temporary injunction to restrain issue of county bonds: when. *Johnson v. Comm'rs of Wilson Co.*, 34 K. 670, 9 P. 384.
3. Term "municipal corporation" does not embrace school district. *Freeland v. Stillman*, 49 K. 197, 30 P. 235.

4. Cited in discussing methods of contesting elections of public officers. *Berglund v. Hanna*, 149 K. 500, 502, 87 P.2d 581.

5. Act construed and applied; questions justiciable; who may bring action. *Dunn v. Board of County Comm'rs of Morton County*, 165 K. 314, 316, 320, 321, 194 P.2d 924.

6. Taxpayer entitled to injunctive relief under 60-1121 where alleging illegal matters in election for relocation of courthouse site. *Tripp v. Board of County Commissioners*, 188 K. 438, 439, 362 P.2d 612.

25-1502.

History: L. 1871, ch. 79, § 2; R.S. 1923, 25-1502; Repealed, L. 1978, ch. 138, § 22; July 1.

CASE ANNOTATIONS

1. Mandamus where most of votes fraudulent. *The State, ex rel. Wells v. Marston*, 6 K. 524.

2. Poll books are prima facie evidence as to votes and election result. *Russell v. The State, ex rel. Nicholson*, 11 K. 308, 312. Overruled: *Shellabarger v. Nafus*, 15 K. 554.

3. Granting of writ is largely within discretion of court. *Golden v. Elliott*, 13 K. 92; *Light v. The State, ex rel.*, 14 K. 489.

4. Effect of second election held pending the proceedings. *Scott v. Paulen*, 15 K. 162.

5. Mode and time of appeal. *The State, ex rel., v. Smith*, 31 K. 129, 1 P. 251.

6. Act construed and applied; questions justiciable; who may bring action. *Dunn v. Board of County Comm'rs of Morton County*, 165 K. 314, 320, 321, 194 P.2d 924.

25-1503.

History: L. 1871, ch. 79, § 3; R.S. 1923, 25-1503; Repealed, L. 1968, ch. 406, § 145; April 30.

25-1504.

History: L. 1871, ch. 79, § 4; R.S. 1923, 25-1504; Repealed, L. 1978, ch. 138, § 22; July 1.

CASE ANNOTATIONS

1. Action should be brought in name of party in interest. *The State v. Marston*, 6 K. 524.

2. Upon hearing of application defendant may introduce evidence before answer. *Stoddard v. Vanlaningham*, 14 K. 18.

25-1505.

History: L. 1871, ch. 79, § 5; R.S. 1923, 25-1505; L. 1968, ch. 406, § 136; Repealed, L. 1978, ch. 138, § 22; July 1.

CASE ANNOTATIONS

1. Injunction against removal of county seat considered. *Stoddard v. Vanlaningham*, 14 K. 18; *The State, ex rel., v. Eggleston*, 34 K. 714, 10 P. 3; *The State, ex rel., v. Comm'rs of Wabaunsee Co.*, 36 K. 180, 12 P. 942.

2. Injunction against issuance of bonds for county buildings considered. *Johnson v. Comm'rs of Wilson Co.*, 34 K. 670, 9 P. 384.

3. Railroad company not proper party defendant to contest hereunder. *C.K. & W. Rld. Co. v. Evans*, 41 K. 94, 21 P. 216.

JANUARY 14, 1991

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STATE OF KANSAS
OFFICE OF
SECRETARY OF STATE

I, Bill Graves, Secretary of State, do hereby certify that the following persons were elected members of the House of Representatives of the State of Kansas for a two-year term beginning on the second Monday of January, A.D. 1991.

District

1st District Tim Shallenburger	48th District Joan E. Adam
2nd District L.V. (Sam) Roper	49th District Galen Weiland
3rd District Ed McKechnie	50th District Marvin E. Smith
4th District Gilbert Ernest Gregory	51st District Joan Hamilton
5th District George Teagarden	52nd District Jim W. Cates
6th District Marvin Barkis	53rd District Denise Everhart
7th District Bill Brady	54th District Bill Roy, Jr.
8th District Richard Reinhardt	55th District Joan Wagnon
9th District Aldie Ensminger	56th District Kathleen Sebelius
10th District Walker A. Hendrix	57th District George Gomez
11th District Jim D. Garner	58th District Anthony Hensley
12th District Cindy Empson	59th District Elaine L. Wells
13th District Rochelle Chronister	60th District Jeff Freeman
14th District Mark V. Parkinson	61st District Don M. Rezac
15th District Ruth Ann Hackler	62nd District Kent Glasscock
16th District Tim Carmody	63rd District Bruce F. Larkin
17th District Lisa L. Benlon	64th District Steve Lloyd
18th District Eugene P. (Gene) Amos	65th District Alex Scott
19th District Phil Kline	66th District Sheila Hochhauser
20th District Arthur W. Douville	67th District Allan White
21st District Barbara P. Allen	68th District Steve Wiard
22nd District Carol H. Sader	69th District Larry F. Turnquist
23rd District Gary H. Blumenthal	70th District Duane Goossen
24th District Tom Thompson	71st District Eloise Lynch
25th District Al Lane	72nd District Garry Boston
26th District Vincent K. Snowbarger	73rd District Dale M. Sprague
27th District Nancy Brown	74th District Ellen Banman Samuelson
28th District Kerry Patrick	75th District David R. Corbin
29th District Robert (Bob) Vancrum	76th District Rex Crowell
30th District Franklin E. "Frank" Weimer	77th District Kenneth R. King
31st District Bill Wisdom	78th District Dorothy Higginbottom Flottman
32nd District Herman G. Dillon	79th District R. Rand Rock II
33rd District Richard J. (Dick) Edlund	80th District Robert H. Miller
34th District Robert (Bob) Watson	81st District Ann Cozine
35th District Sherman J. Jones	82nd District Elizabeth Baker
36th District Mary Jane Johnson	83rd District Jo Ann Pottorff
37th District Bill Reardon	84th District Barbara Lawrence
38th District Tom Love	85th District Richard Lahti
39th District James E. Lowther	86th District Henry Helgerson
40th District Al Ramirez	87th District Wanda L. Fuller
41st District Clyde D. Graeber	88th District Gwen Welshimer
42nd District Stevi Stephens	89th District Theo Cribbs
43rd District Judith K. Macy	90th District Darlene Cornfield
44th District Sandy Praeger	91st District Tom Bishop
45th District John M. Solbach	92nd District Ken Grotewiel
46th District Betty Jo Charlton	93rd District Rick Bowden
47th District Joann Flower	94th District Georgia Walton Bradford



District

95th District Tom Sawyer
 96th District George R. Dean
 97th District Darrel M. Webb
 98th District Diane Gjerstad
 99th District Susan Wagle
 100th District Jack Sluiter
 101st District Robert E. Krehbiel
 102nd District Donna L. Whiteman
 103rd District Jesse "Jess" Harder
 104th District Michael R. "Mike" O'Neal
 105th District J.C. Long
 106th District Bill Bryant
 107th District Kent Campbell
 108th District Lee Hamm
 109th District Keith Roe
 110th District Carol Dawson

District

111th District Delbert L. Gross
 112th District Bob J. Mead
 113th District Jack Wempe
 114th District Melvin G. Minor
 115th District Melvin J. Neufeld
 116th District Don C. Smith
 117th District Robin Jennison
 118th District Gayle Mollenkamp
 119th District John D. McClure
 120th District Fred Gatlin
 121st District Don E. Crumbaker
 122nd District Gary K. Hayzlett
 123rd District David J. Heinemann
 124th District Eugene L. Shore
 125th District Carl D. Holmes

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused to be affixed my official seal this 3rd day of December, A.D. 1990.

BILL GRAVES

Secretary of State

*Rep. Hochhauser will be sworn in at a later time.

Nominations being in order for Speaker, Rep. Sebelius nominated Rep. Marvin Barkis for Speaker of the House. There being no further nominations, Rep. Miller moved the nominations be closed, and that the temporary clerk be instructed to cast a unanimous ballot for Rep. Barkis as Speaker of the House of Representatives. The motion prevailed.

Secretary of State Graves requested Rep. Barkis to approach the bar for the oath of office.

Speaker-elect Barkis subscribed to the following oath of office, which was administered by Chief Justice Holmes:

STATE OF KANSAS, COUNTY OF SHAWNEE, SS:

I do solemnly swear that I will support the constitution of the United States and the constitution of the State of Kansas, and faithfully discharge the duties of the office of Speaker of the House of Representatives, so help me God. Subscribed and sworn to before me, this 14th day of January, 1991.

RICHARD HOLMES

Chief Justice of the Supreme Court.

Speaker Barkis was presented with the gavel by Secretary of State Graves and assumed the chair.

Speaker Barkis requested that Rev. Kuner offer a special prayer for peace.

PRAYER FOR PEACE

God of compassion, we pray for soldiers, offered for the sake of others, and separated from families and loved ones. Cheer them in their loneliness and sustain them through every trial.

Holy God, give those who send the young to war the wisdom, patience and clear judgment to seek peaceful means of resolving conflict.

God of mercy, console those who must suffer the most from war, the innocent, those made homeless, the orphaned, the hungry. Give compassion to all your children that the needs of those who suffer may be filled.

Lord of all nations, we pray for countries whose weapons are aimed at each other. Especially we pray for the people of Kuwait that they may be delivered from despair. Also we pray for the leaders of Iraq, that they may turn to peaceful ways. We pray

Jan. 16, 1991

REPORTS OF STANDING COMMITTEES

Committee on Rules and Journal recommends that HR 6004 be amended: on page 5, in line 33, by striking "21" and inserting "19"; and the resolution be adopted as amended.

Also recommends SCR 1603 be adopted.

COMMITTEE ASSIGNMENT CHANGES

The Chair announced Rep. Neufeld is withdrawn from Committee on Pensions, Investments and Benefits and named to Committee on Agriculture.

Also, Rep. Amos is withdrawn from Committee on Agriculture and named to Committee on Pensions, Investments and Benefits.

The Chief Clerk of the House of Representatives, Janet Jones, announces that she has taken custody of the court file and evidence of the proceeding (90cv87, District Court of Osage County, Kansas Fourth Judicial District) involving the contested House race in the 59th District of the House of Representatives. The House Select Committee, which will be appointed tomorrow, will determine the availability of viewing the court file and evidence.

REPORT ON ENROLLED RESOLUTIONS

HR 6006 reported correctly enrolled and properly signed on January 16, 1991.

On motion of Rep. Whiteman, the House adjourned until 11:00 a.m., Thursday, January 17, 1991.

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House Select Com-
availability of viewing

January 16, 1991.
1:00 a.m., Thursday,

FOURTH DAY

HALL OF THE HOUSE OF REPRESENTATIVES,
TOPEKA, KAN., Thursday, January 17, 1991, 11:00 a.m.

The House met pursuant to adjournment with Speaker Barkis in the Chair. The roll was called with 124 members present. Rep. Webb was excused on verified illness.

Prayer by Guest Chaplain, the Reverend W. James Richards, pastor, First Presbyterian Church, Topeka:

God, in these times of crisis and war, when we swing between fear and hope, between anxiety and reassurance, be with us all - here in this place, and in the middle-east. Be with all those who face loss - whose loved ones are in the midst of battle, on our side and theirs.

Help us all as we do our work today, to listen for your promptings, to rest in your presence and to rely on your guidance. Amen.

CHANGE OF REFERENCE

Speaker Barkis announced HCR 5001 is withdrawn from Committee on Education and referred to Committee on Economic Development.

COMMITTEE ASSIGNMENTS

Speaker Barkis announced the formation of the Committee on Computers, Communication and Technology and appointed the following members: Rep. Dean, Chairperson; Rep. McKechnie, Vice-Chairperson; and Reps. Rock, Roper, Patrick, Kline and Mead.

SELECT COMMITTEE ON ELECTION CONTEST

The following committee was appointed by Speaker Barkis to determine the availability of viewing the court file and evidence of the proceeding (90cv87, District Court of Osage County, Kansas Fourth Judicial District) involving the contested House race in the 59th District of the House of Representatives:

Rep. Roy, Chairperson; Rep. Snowbarger, Vice-Chairperson; and Reps. Sawyer, Solbach, O'Neal and Shallenburger.

COMMUNICATIONS FROM STATE OFFICERS

Janet E. Jones, Chief Clerk of the House, reports receipt of the Fiscal Year 1990 JTPA 3% Older Worker Program and Fiscal Year 1990 Older Kansans Employment Program (OKEP) from Esther Valladolid Wolf, Secretary of Human Resources.

Also, the receipt of the Kansas Post Secondary Education Profile, Fourth Edition, from the Kansas Legislative Research Department.

The complete reports are kept on file for inspection in the office of the Chief Clerk.

MESSAGE FROM THE SENATE

Announcing adoption of SR 1803, a resolution relating to the organization of the 1991 Senate and selection of the following officer:

Gerald L. "Jerry" Karr, minority leader.

MOTIONS AND RESOLUTIONS OFFERED ON A PREVIOUS DAY

On motion of Rep. Crumbaker, **HR 6007**, A resolution congratulating and commending the Colby High School boy's tennis team and Coach David Steve for being the 1989-90 Class 4A State Tennis Champion in Kansas, was adopted.

On motion of Rep. Miller, **HR 6008**, A resolution honoring Gene Haughey for his many years of service to the Kansas House of Representatives.

INTRODUCTION OF GUESTS

Speaker Barkis recognized Gene Haughey who addressed a few remarks to the members of the House.

On motion of Rep. Whiteman, the House went into committee of the Whole, with Rep. Reardon in the chair.

COMMITTEE OF THE WHOLE

On motion of Rep. Reardon, Committee of the Whole report, as follows, was adopted:

Recommended that SCR 1603 be adopted.

Committee report to **HR 6004** be adopted; also, on motion of Rep. Roy, **HR 6004** as amended by House Committee, be amended on page 5, following line 33, by inserting "5. Computers, Communication and Technology . . . 7"; also, on page 5, in lines 34 to 43 by renumbering items 5 through 14 as items 6 through 15 respectively;

On page 6, in lines 1 through 7 by renumbering items 15 through 21 as items 16 through 22 respectively, and **HR 6004** be adopted as amended.

Upon unanimous consent, the House referred back to the regular order of business, Introduction of Bills and Concurrent Resolutions.

INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

The following bill was introduced and read by title:

HB 2026 by Representatives Freeman, Everhart, Larkin, Mollenkamp, Rezac, Weiland and Wells: An act concerning rural water districts; relating to the dissolution thereof, amending K.S.A. 82a-629 and repealing the existing section.

INTRODUCTION OF ORIGINAL MOTIONS

Rep. Roy moved that the House of Representatives authorize the Select Committee on Election Contest to fix reasonable times during which access to files, records and evidence transmitted from the district court are made available to members of the House. The motion prevailed.

INTRODUCTION OF ORIGINAL MOTIONS AND HOUSE RESOLUTIONS

The following resolution was introduced and read by title:

HOUSE RESOLUTION No. 6009—

A RESOLUTION congratulating and commending the Scott County High School football team and Coach Dave Dunham for winning the 1990 Class 4A State Football Championship in Kansas.

WHEREAS, The Scott County High School football team won the 1990 Kansas State High School Activities Association Class 4A State Football Championship on November 17, 1990, at Cessna Stadium in Wichita; and

TENTH DAY

HALL OF THE HOUSE OF REPRESENTATIVES,
TOPEKA, KAN., Monday, January 28, 1991, 11:00 a.m.

The House met pursuant to adjournment with Speaker Barkis in the Chair.
The roll was called with 120 members present.
Reps. Cribbs, Douville and Webb were excused on verified illness.
Reps. Gomez and Goosen were excused on excused absence by the Speaker.

Prayer by Chaplain Kuner:

Blessed are you, O Lord, our God, Ruler of the universe. On this day when we begin our work, we pray that you would fill our minds with knowledge and our hearts with wisdom. Always remind us of the best that is in us and so enable us to use our freedom responsibly. Help us to feel the anguish of the afflicted and the oppressed, inspire us with a vision of justice and love.

Hear our prayers made in your name. Amen.

REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following bills and resolutions were referred to Committees as indicated:

Appropriations: **HB 2044, 2045, 2046, 2047, 2048, 2049.**

Commercial and Financial Institutions: **HB 2042, 2059.**

Education: **HB 2041.**

Judiciary: **HB 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057.**

Pensions, Investments and Benefits: **HB 2058.**

Transportation: **HB 2043.**

REPORT OF SELECT COMMITTEE ON ELECTION CONTEST

Mr. Speaker: Your Select Committee on Election Contest submits the following report on the contest of election for the 59th District seat to the House of Representatives and recommends that the report be adopted. The notice of Contest of Election was filed by Karlen Christesen-Wellman (now known as Karlen Christesen-Jones). Contestant. Elaine L. Wells is the Contestee.

In the original tabulation of the results of the election in the initial canvas by the Lyon and Osage County Boards of Canvassers, it was declared that Christesen-Jones received 3,474 votes and Wells received 3,463 votes. Upon a recount requested by Wells, Wells was declared the winner by the respective County Boards of Canvassers by a vote of 3,476 to 3,474. The State Board of Canvassers declared Wells the winner on November 28, 1990, and issued to her a Certificate of Election.

Following the filing of the notice of the Contest of Election by Christesen-Jones, District Judge Merlin G. Wheeler, Fifth Judicial District Court of the State of Kansas, granted the motions of both parties for the inspection of ballots pursuant to K.S.A. 25-1447.

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THE HOUSE OF REPRESENTATIVES,
y. January 28, 1991, 11:00 a.m.

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CONTEST CONTEST

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A Board of Inspection for Lyon County and a Board of Inspection for Osage County were appointed by Judge Wheeler. These Boards recounted all ballots for all precincts in the 59th District in Lyon and Osage counties. The Boards identified 651 ballots for inspection by Judge Wheeler that were questionable in some respect and could not be agreed upon by the unanimous vote of the inspectors.

Counsels to the parties reviewed the questionable ballots and agreed on how they should be counted, except for 62 ballots that remained in question. Judge Wheeler reviewed these ballots and issued the finding that 3,485 legal votes were cast for Wells and 3,480 legal votes were cast for Christesen-Jones.

Pursuant to K.S.A. 25-1451, the Speaker of the House of Representatives appointed the Select Committee to consider files, records, and evidence transmitted from the Court and to hold public hearings on the contested election. The transcript of the Court hearing was not available for the Committee's review and the Committee was told that it would not be available prior to the designated deadline for submitting the Committee's report. The Committee received a document from the Court entitled "Memorandum Decision and Judgement" that contains information on the Judge's findings of fact and conclusions on some, but not all, of the ballots in question.

The Select Committee on Election Contest held public meetings on six different occasions. The Committee first established its rules of order. The respective counsels for the contestant and contestee were asked by Committee members to present arguments for any election ballot that they considered to be at issue. The Committee members also heard testimony from Christesen-Jones and Wells.

Following the oral arguments of the counsels for the parties, the Committee reviewed the election ballots at issue and makes the following recommendations for each of those ballots. (According to the rules adopted by the Committee, a separate recommendation for each ballot at issue is made by the Committee.)

Ballot 59

Issue: Ballot 59 is at issue with regard to whether the intent of the voter can be determined. The ballot has arrows drawn in the left hand column that point to the name of each candidate whose voting box has been marked.

Court Ruling (not addressed in "Memorandum"): According to counsel for the parties, the Judge ruled that this ballot should be counted.

Committee Recommendation: By a unanimous vote, the Committee recommends that Ballot 59 be counted because voter intent is clear.

Related Ballots: Counsel for one party argued that if Ballot 59 is not counted, Ballots 272, 403, 424, 495, 598, 616, and 623 also should not be counted. Based upon the Committee's decision to count Ballot 59, the related ballots are no longer at issue.

Ballot 62

Issue: Ballot 62 is at issue with regard to whether it was properly preserved by methods prescribed by law after the vote had been cast by the voter. K.S.A. 25-3003 requires that a ballot be properly preserved after the vote has been cast. Testimony presented by counsel for one party said that the ballot was treated as spoiled or objected to by election officials. There were derogatory comments written by the names of certain candidates on the ballot.

Court Ruling (not addressed in "Memorandum"): The Judge ruled that Ballot 62 should be counted.

Committee Recommendation: By a vote of four to two, the Committee recommends that Ballot 62 be counted. In the Committee's opinion, Ballot 62 was properly cast but was not properly handled by election officials. Therefore, the Committee recommends that Ballot 62 be counted.

Ballot 100

Issue: Ballot 100 is at issue with regard to whether it bears an identifying mark. K.S.A. 25-3002 provides that a ballot that bears an identifying mark is void and shall not be counted. The voter who cast Ballot 100 made two errors in marking the ballot. To correct the mistakes, the voter wrote "error" beside the marks and wrote his initials to indicate that he had made the corrections.

Court Ruling: The Judge ruled that Ballot 100 should not be counted. According to "Memorandum Decision and Judgement," the Judge initially ruled that Ballot 100 be counted but then reversed his decision and ruled that the initials of the voter on the ballot were clearly identifying marks and that, therefore, the ballot is void and should not be counted.

Committee Recommendation: By a vote of three to two with one member abstaining, the Committee recommends that Ballot 100 be counted. K.S.A. 25-3002 provides that no ballot shall be invalidated by a technical error as long as it is possible to determine voter intent. In the Committee's opinion, although the ballot bears the voter's initials, the initials alone are not sufficient to establish the voter's identity with any certainty. Therefore, the Committee recommends that Ballot 100 be counted.

Ballot 122

Issue: Ballot 122 was cast by a registered voter who cast her vote at an incorrect polling place. Article 5, section 1, of the *Kansas Constitution* requires a voter to vote in the voting area in which the voter resides. Election workers informed the voter that she was voting in the wrong precinct, permitted her to vote, and informed her that her vote would be challenged. They also suggested that she vote at another precinct, even though they were not able to assure her that the suggested precinct was correct.

Court Ruling: The Judge ruled that Ballot 122 should be counted. According to "Memorandum Decision and Judgement," the Judge found no evidence that the voter meant to violate election laws. Furthermore, the Judge cited K.S.A. 25-3002, which provides that no ballot should be invalidated by a technical error.

Committee Recommendation: By a vote of four to two, the Committee recommends Ballot 122 not be counted. While the Committee agrees that the voter did not mean to violate the law, the law is clear, and an orderly election process demands, that there be some system to ensure that voters vote in designated areas. Without such a system, the election process becomes chaotic and its integrity is lost. Therefore, the Committee recommends that Ballot 122 not be counted.

Ballot 123

Issue: Ballot 123 is a vote cast by a voter who changed her surname from that under which she was registered to vote. She failed to reregister under her new surname as is required by K.S.A. 25-2316c. Therefore, this ballot was challenged by election officials, placed in a sealed envelope, and not counted.

Court Ruling: The Judge ruled the envelope should not be opened and, therefore, this ballot has not been counted. According to "Memorandum Decision and Judgement," the Judge had no evidence that the voter was qualified. K.S.A. 25-2316c allows a 30-day grace period preceding an election in which a person who changes his or her name may vote without reregistering, providing that the person fills out an affidavit stating facts relevant to the name change. In the case of this voter, the Judge was not able to determine whether her name change occurred before or after the 30-day grace period began. Therefore, he ruled that the sealed envelope not be opened.

Committee Recommendation: By a vote of 5 to 1, the Committee recommends that the envelope be opened and the ballot, if otherwise valid, be counted. In the Committee's opinion, K.S.A. 25-2316c discriminates against women, who are more

either it bears an identifying mark. An identifying mark is void and shall be void if there are two errors in marking the ballot. The voter marked "X" beside the marks and wrote his initials.

Ballot 100 should not be counted. According to the Judge initially ruled that Ballot 100 should be counted because the initials of the voter on the ballot, therefore, the ballot is void and should not be counted.

Three to two with one member abstaining, Ballot 100 should be counted. K.S.A. 25-3002 provides that a ballot that bears an identifying mark is void and shall not be counted. The Judge ruled that Ballot 100 should be counted.

The voter who cast her vote at an incorrect precinct. The Constitution requires a voter to vote at the precinct where the voter is registered. Election workers informed the voter that she had voted there, and informed her that she vote at another precinct. The Judge ruled that the suggested precinct should be counted.

Ballot 102 should be counted. According to the Judge, there was no evidence that the voter marked the ballot in a technical error. The Judge cited K.S.A. 25-3002, which provides that a ballot that bears an identifying mark is void and shall not be counted.

Three to two, the Committee recommends that Ballot 102 be counted. The voter did not mean to indicate a preference in all other races. Without such a preference, the ballot's integrity is lost. Therefore, the ballot should be counted.

The voter who changed her surname from that on her registration card. The voter failed to reregister under her new name. This ballot was challenged by the voter and should not be counted.

The ballot should not be opened and, therefore, should be counted. According to the "Memorandum Decision and Court Ruling," the voter was qualified. K.S.A. 25-2316c provides that the person fills out the ballot in which a person who changes their name, providing that the person fills out the ballot before or after the name change occurred before or after the ballot was sealed. The Judge ruled that the sealed envelope not be opened and, therefore, should be counted.

Three to one, the Committee recommends that Ballot 103 be counted. In the case of women, who are more likely than men to change their names, and could be subject to challenge on the basis of its constitutionality. Because the Committee believes the law may discriminate on the basis of gender and might not withstand a constitutional challenge, it recommends that the envelope be opened and the vote be counted so that this woman's right to vote will not be denied.

Ballot 153

Issue: Ballot 153 is at issue with regard to whether it bears an identifying mark. K.S.A. 25-2908 requires that each ballot have a number written upon it which corresponds to the voter's number in the poll books who cast the ballot. Election workers are required by K.S.A. 25-2905 to cut off the identifying number when the ballot has been cast. Ballot 153 has not been properly clipped, which makes it possible to identify the voter. K.S.A. 25-3002 provides that a ballot that bears an identifying mark is void and shall not be counted.

Court Ruling (not addressed in "Memorandum"): The Judge ruled that Ballot 153 should be counted.

Committee Recommendation: By a vote of four to two, the Committee recommends that Ballot 153 not be counted. Ballot 153 retains an identifying number that makes it possible for anyone who looks at the poll book to determine the identity of the voter. K.S.A. 25-3002 provides that a ballot that has been cast by a voter shall not be counted if it bears an identifying mark. Therefore, the Committee recommends that Ballot 153 not be counted.

Ballot 156

Issue: Ballot 156 is at issue with regard to whether the intent of the voter can be determined. The voter marked one choice for each elected office using a cross mark, except that, in the case of the two voting boxes for candidates for the 59th House seat, the voter marked a cross mark in one box and a zero in the other box.

Court Ruling (not addressed in "Memorandum"): The Judge ruled that Ballot 156 should be counted.

Committee Recommendation: By a vote of three to two with one member abstaining, the Committee recommends that Ballot 156 be counted. K.S.A. 25-3002 provides that no ballot shall be invalidated by a technical error as long as it is possible to determine voter's intent. The voter was consistent in using a cross mark to indicate preference in all other races. Therefore, the Committee recommends that Ballot 156 be counted.

Related Ballots: Counsel for one party argued that if Ballot 156 is not counted, Ballot 314 also should not be counted. Based on the Committee's decision to count Ballot 156, the related ballot is no longer at issue.

Ballot 166

Issue: Ballot 166 is at issue with regard to whether the intent of the voter can be determined. The ballot has heavy diagonal slashes drawn through the voting boxes to indicate the candidate for each office who is being selected. The slashes extend beyond the boundaries of the selected boxes.

Court Ruling (not addressed in "Memorandum"): According to counsel for the parties, the Judge ruled that this ballot should be counted.

Committee Recommendation: By a unanimous vote, the Committee recommends that Ballot 166 be counted because voter intent is clear.

Related Ballots: Counsel for one party argued that if Ballot 166 is not counted, Ballots 50, 79, 87, 173, and 381 also should not be counted. Based upon the Committee's decision to count Ballot 166, the related ballots are no longer at issue.

Ballot 426

Issue: Election workers placed Ballot 426 in an envelope and wrote on the envelope that the ballot was "not voted." That envelope, in turn, was placed in a storage envelope for void, objected to, or challenged ballots. However, upon inspection, it appears that the identifying number on the ballot has been properly clipped and the ballot appears to be properly cast.

Court Ruling: The Judge ruled that Ballot 426 be counted. According to "Memorandum Decision and Judgement," the Judge found no evidence that the ballot had been defaced or otherwise invalidated. Therefore, he ruled that the ballot should be counted.

Committee Recommendation: By a vote of 4 to 2, the Committee recommends that Ballot 426 not be counted. In the Committee's opinion, the many irregularities that occurred in the handling of this ballot raise questions as to whether it was cast by an eligible voter. Even though, on its face, the ballot appears to be properly cast, the question of whether it was cast by a qualified voter cannot be answered. Therefore, Ballot 426 should not be counted.

Ballot 428

Issue: It is not known whether Ballot 428 was counted because election workers placed it in a box intended for unused judicial ballots. The inspection board for Osage County appointed by the Court found the ballot when the Board determined that more votes were cast than there were ballots. Although the identifying number in the corner of the ballot was properly clipped, the ballot had not been "strung." That is, it had not been properly preserved after the vote had been cast, raising a question as to whether it had been counted. Therefore, the ballot was placed in a sealed envelope and presented to the Court.

Court Ruling The Judge ruled that Ballot 428 should be counted. According to "Memorandum Decision and Judgement," the Judge found no reason to consider the ballot invalid nor did he find any evidence of fraud or wrongdoing. Therefore, he ordered the envelope opened and Ballot 428 counted.

Committee Recommendation: By a vote of 3 to 2 with one member abstaining, the Committee recommends that Ballot 428 not be counted. In the Committee's opinion, it is not possible to reconstruct the circumstances surrounding why this ballot was mishandled. The irregularities that occurred raise serious questions as to whether the ballot was cast by a qualified voter. Therefore, the Committee recommends that Ballot 428 not be counted.

Ballot 492

Issue: After a ballot is marked, election workers are required to cut off an identifying number in the corner of the ballot. In the case of Ballot 492, the cut was made in such a way that part of the ballot containing a box beside the name of a candidate in a race not at issue here also was cut off. The part of the ballot that was cut off was retrieved and taped back on the ballot. K.S.A. 25-3002 provides that any ballot which has been defaced, mutilated, or torn shall not be counted. The statute also provides that no ballot shall be invalidated because of a technical error unless it is impossible to declare the voter's intention.

Court Ruling (not addressed in "Memorandum"): The Judge ruled that Ballot 492 be counted. According to counsel for one party, the Judge stated the ballot was mutilated. However, the Judge also said legislative intent is unclear because K.S.A. 25-3002 provides that no ballot shall be invalidated because of a technical error as long as it is possible to declare the voter's intention. Because the intention of the voter is not in question in the case of Ballot 492, the Judge ruled that the ballot should be counted.

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Committee Recommendation: By a vote of 5 to 1, the Committee recommends that Ballot 492 be counted because voter intent is clear.

Related Ballots: Counsel for one party argued that if Ballot 492 is not counted, Ballots 146, 302, and 454 also should not be counted. Based upon the Committee's decision to count Ballot 492, the related ballots are no longer at issue.

Ballot 493

Issue: After a ballot is marked, election workers are required to cut off an identifying number in the corner of the ballot. In the case of Ballot 493, the cut was made in such a way that part of the ballot containing a box beside the name of a candidate in a race not at issue here also was cut off. The part of the ballot that was cut off was retrieved and taped back on the ballot. K.S.A. 25-3002 provides that any ballot which has been defaced, mutilated, or torn shall not be counted. The statute also provides that no ballot shall be invalidated because of a technical error unless it is impossible to declare the voter's intention.

Court Ruling (not addressed in "Memorandum"): The Judge ruled that Ballot 493 be counted. According to counsel for one party, the Judge stated the ballot was mutilated. However, the Judge also said legislative intent is unclear because K.S.A. 25-3002 provides that no ballot shall be invalidated because of a technical error as long as it is possible to declare the voter's intention. Because the intention of the voter is not in question in the case of Ballot 493, the Judge ruled that the ballot should be counted.

Committee Recommendation: By a vote of 5 to 1, the Committee recommends that Ballot 493 be counted because voter intent is clear.

Related Ballots: Counsel for one party argued that if Ballot 493 is not counted, Ballots 146, 302, and 454 also should not be counted. Based upon the Committee's decision to count Ballot 493, the related ballots are no longer at issue.

Ballot 528

Issue: Ballot 528 is an original of a telefaxed absentee ballot that appears to be properly cast. Because it is a faxed copy, the inspection board appointed by the Judge identified Ballot 528 as questionable.

Court Ruling: The Judge ruled that Ballot 528 should not be counted. According to "Memorandum Decision and Judgement," no evidence was presented to the Court to indicate that the ballot was cast by a qualified voter. The Judge ruled that time did not permit the Court to wait for further information. Therefore, he ruled that Ballot 528 should not be counted, but that, if additional information became available, it should be considered by the Kansas House of Representatives.

Committee Recommendation: By a unanimous vote, the Committee recommends that Ballot 528 be counted. Testimony before the Committee, not available to the Court, indicates that an absentee ballot was faxed to a serviceman in Saudi Arabia who marked the original faxed copy and had it delivered to his wife. (Federal law permits individuals in the military to cast absentee ballots, including a special provision for Operation Desert Shield.) The serviceman's wife testified before the Committee that her husband is a qualified voter and that she had mailed his completed ballot to the proper election officials. Therefore, the Committee recommends that Ballot 528 be counted.

Ballot 529

Issue: K.S.A. 25-1124 requires that a voter must fill out and sign a "declaration of absent voter" form that is printed on the outside of the envelope in which an absentee ballot is placed. The "declaration of absent voter" form for Ballot 529 was neither filled out nor signed.

Court Ruling: The Judge ruled the ballot should be counted. According to "Memorandum Decision and Judgement," evidence presented to the Court indicates

that the voter was qualified to vote and, therefore, failure to sign the ballot was a technical error.

Committee Recommendation: By a unanimous vote, the Committee recommends that Ballot 529 not be counted. The law is clear that declaration of absentee voter forms must be filled out and signed and it is the Committee's finding that the law was not sufficiently complied with. The Court was able to identify the voter and establish that the voter was indeed qualified only because this election was contested. Had the election not been contested, it would not have been possible to validate the qualifications of the voter. K.S.A. 25-1136 prohibits election officials from opening an absentee ballot if the form accompanying the ballot is insufficient. The purpose of the law is to prevent election fraud and to ensure that votes are properly cast by qualified electors. In the case of Ballot 529, the law was not complied with.

Ballot 530

Issue: The "declaration of absent voter" form for Ballot 530 was neither filled out nor signed. Existing law (K.S.A. 25-1124) requires that a voter must fill out and sign a "declaration of absent voter" form that is printed on the outside of the envelope in which an absentee ballot is placed.

Court Ruling: The Judge ruled the ballot should be counted. According to "Memorandum Decision and Judgement," evidence presented to the Court indicates that the voter was qualified to vote and, therefore, failure to sign the ballot was a technical error.

Committee Recommendation: By a unanimous vote, the Committee recommends that Ballot 530 not be counted. The law is clear that declaration of absentee voter forms must be filled out and signed and it is the Committee's finding that the law was not sufficiently complied with. The Court was able to identify the voter and establish that the voter was indeed qualified only because this election was contested. Had the election not been contested, it would not have been possible to validate the qualifications of the voter. Existing law (K.S.A. 25-1136) prohibits election officials from opening an absentee ballot if the form accompanying the ballot is insufficient. The purpose of the law is to prevent election fraud and to ensure that votes are properly cast by qualified electors. In the case of Ballot 530, the law was not complied with.

Ballot 531

Issue: Ballot 531 is an absentee ballot for which the "declaration of absent voter" form was neither filled out nor signed. According to existing law (K.S.A. 25-1124), a voter must fill out and sign a "declaration of absent voter" form that is printed on the outside of the envelope in which an absentee ballot is placed.

Court Ruling: The Judge ruled the ballot should be counted. According to "Memorandum Decision and Judgement" evidence presented to the Court indicates that the voter was qualified to vote and, therefore, failure to sign the ballot was a technical error.

Committee Recommendation: By a unanimous vote, the Committee recommends that Ballot 531 not be counted. The law is clear that declaration of absentee voter forms must be filled out and signed and it is the Committee's finding that the law was not sufficiently complied with. The Court was able to identify the voter and establish that the voter was indeed qualified only because this election was contested. Had the election not been contested, it would not have been possible to validate the qualifications of the voter. Election officials are prohibited by K.S.A. 25-1136 from opening an absentee ballot if the form accompanying the ballot is insufficient. The purpose of the law is to prevent election fraud and to ensure that votes are properly cast by qualified electors. In the case of Ballot 531, the law was not complied with.

e. failure to sign the ballot was a vote, the Committee recommends that declaration of absentee voter Committee's finding that the law was able to identify the voter and because this election was contested. It has not been possible to validate the ballot. Election officials from opening the ballot is insufficient. The purpose of the law is to ensure that votes are properly cast by the voter and that the law was not complied with.

or Ballot 530 was neither filled out nor signed by a voter must fill out and sign the ballot on the outside of the envelope

should be counted. According to the evidence presented to the Court indicates that the failure to sign the ballot was a

vote, the Committee recommends that declaration of absentee voter Committee's finding that the law was able to identify the voter and because this election was contested. It has not been possible to validate the ballot. Election officials from opening the ballot is insufficient. The purpose of the law is to ensure that votes are properly cast by the voter and that the law was not complied with.

with the "declaration of absent voter" form to existing law (K.S.A. 25-1124), the ballot is placed.

should be counted. According to the evidence presented to the Court indicates that the failure to sign the ballot was a

vote, the Committee recommends that declaration of absentee voter Committee's finding that the law was able to identify the voter and because this election was contested. It has not been possible to validate the ballot. Election officials from opening the ballot is insufficient. The purpose of the law is to ensure that votes are properly cast by the voter and that the law was not complied with.

Ballot 532

Issue: Ballot 532 is an absentee ballot that is at issue because a man failed to file an affidavit of assistance as required by K.S.A. 25-1124. The law allows a person to render assistance to someone who is in need of the assistance, providing that an affidavit is signed by the person who provides the assistance. The man obtained an absentee ballot for his paralyzed wife and marked it to reflect her voting choices. He then attempted to help her with her signature, but when the signature was unclear, he went ahead and completed his wife's identifying declaration and signed her name. He also identified on the envelope that he had made the signature for his wife.

Court Ruling: The Judge ruled that Ballot 532 should be counted. According to "Memorandum Decision and Judgement," the Judge said that there is no evidence that undue influence had been exerted on the voter nor is there any evidence of wrongdoing.

Committee Recommendation: The Committee was unable to reach agreement on Ballot 532 and therefore makes no recommendation.

Ballot 533

Issue: Ballot 533 is at issue because of failure to fill out or sign the "declaration of absent voter" form. The law (K.S.A. 25-1124) requires that a voter must fill out and sign a "declaration of absent voter" form that is printed on the outside of the envelope in which an absentee ballot is placed.

Court Ruling: The Judge ruled the ballot should be counted. According to "Memorandum Decision and Judgement," evidence presented to the Court indicates that the voter was qualified to vote and, therefore, failure to sign the ballot was a technical error.

Committee Recommendation: By a unanimous vote, the Committee recommends that Ballot 533 not be counted. The law is clear that declaration of absentee voter forms must be filled out and signed and it is the Committee's finding that the law was not sufficiently complied with. The Court was able to identify the voter and establish that the voter was indeed qualified only because this election was contested. Had the election not been contested, it would not have been possible to validate the qualifications of the voter. K.S.A. 25-1136 prohibits election officials from opening an absentee ballot if the form accompanying the ballot is insufficient. The purpose of the law is to prevent election fraud and to ensure that votes are properly cast by qualified electors. In the case of Ballot 533, the law was not complied with.

Ballot 552

Issue: Ballot 552 is at issue because it has a tear in it. The tear has been taped over with transparent tape. It is not known how the ballot was torn, but, according to counsel for the parties, the ballot may have been torn by an optical scanner used by election officials. K.S.A. 25-3002 provides that any ballot which has been defaced, mutilated, or torn shall not be counted. The statute also provides that no ballot shall be invalidated because of a technical error unless it is impossible to declare the voter's intention.

Court Ruling (not addressed in "Memorandum"): According to counsel for the parties, the Judge ruled that this ballot should be counted.

Committee Recommendation: By a vote of 5 to 1, the Committee recommends that Ballot 552 be counted because voter intent is clear.

Related Ballots: Counsel for one party argued that if Ballot 552 is not counted, Ballots 565, 570, 613, 632, 635, 639, and 644 also should not be counted. Based upon the Committee's decision to count Ballot 552, the related ballots are no longer at issue.

Mazie Trail Ballot

Issue: K.S.A. 25-1132 requires that an absentee ballot must reach county election officials by the time the polls close. In the case of the Mazie Trail Ballot, the ballot was placed in a drop box at the Lyon County Courthouse and not discovered until the day after the election. Therefore, the ballot has never been opened. The materials in the drop box are collected once a day between 8:00 a.m. and 8:30 a.m. According to information presented to the Court, the ballot was placed in the box at 8:40 a.m. Information presented also indicated that the drop box has been used by Mazie Trail in past elections to successfully cast her absentee ballot. The box is labeled "Courthouse Business Only — Not for U.S. Mail."

Court Ruling: The Judge ruled that the Mazie Trail Ballot should not be opened or counted. According to "Memorandum Decision and Judgement," the Judge ruled that the law mandates that absentee ballots must be received by the election officials by the time the polls close and places no burden on election officials to seek out ballots that have not been delivered directly to them.

Committee Recommendation: The Committee was unable to reach agreement on the Mazie Trail Ballot and therefore makes no recommendation.

Based on the recommendations of the Select Committee on Election Contest, a total of 3,481 legal votes is cast for Elaine L. Wells and a total of 3,478 legal votes is cast for Karlen Christesen-Jones. These totals do not include sealed Ballot 123, which the Committee recommends be opened by the House. Nor do the totals include the Mazie Trail Ballot, upon which the Committee was unable to reach agreement.

Respectfully submitted,

January 28, 1991

Rep. William R. Roy, Jr. Chairperson
Select Committee on Election
Contest

Rep. Vince Snowbarger,
Vice-Chairperson
Rep. Michael O'Neal
Rep. Michael Tom Sawyer

Rep. Tim Shallenburger
Rep. John Solbach

91-79/PM

MOTIONS AND RESOLUTIONS OFFERED ON A PREVIOUS DAY

On motion of Rep. Cates, HR 6012, A resolution congratulating and commending the H.D.B. Construction Company on being selected the 1990 Outstanding Kansas Minority-Owned Construction firm of the year, was adopted.

Upon unanimous consent, the House referred back to the regular order of business, Introduction of Bills and Concurrent Resolutions.

INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were introduced and read by title:

HB 2060, by Committee on Transportation: An act relating to handicapped parking; concerning the definition of physician; amending K.S.A. 1990 Supp. 8-1,124 and repealing the existing section.

HB 2061 by Committee on Insurance: An act relating to insurance companies and fraternal benefit societies; excluding certain assessments to pay claims of insolvent insurers from the retaliatory taxation, penalty and fee structure; amending K.S.A. 40-253 and repealing the existing section.

HOUSE CALENDAR

No. 10

TUESDAY, JANUARY 29, 1991
HOUSE CONVENES AT 10:30 A.M. TODAY

ROLL CALL

INVOCATION

READING AND CORRECTION OF JOURNAL

INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

Reference of Bills and Concurrent Resolutions

2060—

House bill No. 2060, An act relating to handicapped parking; concerning the definition of physician; amending K.S.A. 1990 Supp. 8-1,124 and repealing the existing section.

Committee on Transportation

(Transportation)

2061—

House bill No. 2061, An act relating to insurance companies and fraternal benefit societies; excluding certain assessments to pay claims of insolvent insurers from the retaliatory taxation, penalty and fee structure; amending K.S.A. 40-253 and repealing the existing section.

Committee on Insurance

(Insurance)

REPORTS OF SELECT COMMITTEES

Report of Select Committee on Election Contest—

(Rules and Journal)
(Be adopted)

MESSAGES FROM THE GOVERNOR

COMMUNICATIONS FROM STATE OFFICERS

MESSAGES FROM THE SENATE

Reference of Senate Bills and Concurrent Resolutions

S. P. 4302

Jan. 30, 1991

2068—

House bill No. 2068, An act relating to elections; concerning the minimum votes required for nomination in primary election; amending K.S.A. 25-213 and repealing the existing section.

Committee on Elections

(Election)

2069—

House bill No. 2069, An act relating to elections; concerning certain petitions; amending K.S.A. 25-4005 and 25-4324 and K.S.A. 1990 Supp. 25-4320 and repealing the existing sections.

Committee on Elections

(Elections)

2070—

House bill No. 2070, An act concerning elections; amending the mail ballot election act; concerning school district bond elections; amending K.S.A. 25-432 and repealing the existing section.

Committee on Elections

(Elections)

2071—

House bill No. 2071, An act relating to elections; concerning registration and declaration of party affiliation by voters; amending K.S.A. 1990 Supp. 25-2311 and 25-3304 and repealing the existing sections.

Committee on Elections

(Elections)

REPORTS OF SELECT COMMITTEES

Report of Select Committee on Election Contest—

(Rules and Journal)

(Be adopted)

MESSAGES FROM THE GOVERNOR

COMMUNICATIONS FROM STATE OFFICERS

MESSAGES FROM THE SENATE

Reference of Senate Bills and
Concurrent Resolutions

INTRODUCTION OF ORIGINAL MOTIONS AND HOUSE RESOLUTIONS

MOTIONS AND RESOLUTIONS OFFERED ON A PREVIOUS DAY

THE UNFINISHED BUSINESS BEFORE THE HOUSE

Consent Calendar

2084—

House bill No. 2084, An act establishing the governor's commission on mental retardation and other developmental disabilities; relating to the composition thereof; prescribing functions therefor.

Representatives Helgerson and Blumenthal
(Governmental Organization)

REPORTS OF SELECT COMMITTEES

Report of Select Committee on Election Contest—

(Rules and Journal)
(Be adopted)

MESSAGES FROM THE GOVERNOR

COMMUNICATIONS FROM STATE OFFICERS

MESSAGES FROM THE SENATE

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Consent Calendar

Final Action on Bills and Concurrent Resolutions

2003—

House bill No. 2003, An act concerning certain correctional facilities; amending K.S.A. 1990 Supp. 75-52,133 and repealing the existing section.

Special Committee on Judiciary
Re Proposal No. 12

(Judiciary)
(Be passed as amended)

2011—

House bill No. 2011, An act concerning juveniles; relating to moneys credited to the juvenile detention facilities fund and disposition thereof; abolishing the juvenile detention facilities capital improvements fund; amending K.S.A. 1990 Supp. 8-241, 8-2110 and 79-4803 and repealing the existing sections; also repealing K.S.A. 1990 Supp. 38-556.

Special Committee on Judiciary
Re Proposal No. 16

(Judiciary)
(Be passed as amended)

INTRODUCTION OF ORIGINAL MOTIONS AND HOUSE RESOLUTIONS

MOTIONS AND RESOLUTIONS OFFERED ON A PREVIOUS DAY

THE UNFINISHED BUSINESS BEFORE THE HOUSE

Consent Calendar

Final Action on Bills and Concurrent Resolutions

Bills Under Consideration to Concur or Nonconcur

General Orders

2004—

House bill No. 2004, An act concerning children and minors; relating to the Kansas parentage act; amending K.S.A. 38-1118 and 38-1119 and repealing the existing sections.

Special Committee on Judiciary
Re Proposal No. 12

(Judiciary)
(Be passed as amended)

2015—

House bill No. 2015, An act concerning counties and townships; relating to township roads; amending K.S.A. 1990 Supp. 68-560 and repealing the existing section.

Special Committee on Local Government
Re Proposal No. 25

(Local Government)
(Be passed as amended)

REPORTS OF STANDING COMMITTEES

Bills Adversely Reported

Special Order of Business
Friday, February 1, 1991, 9:00 a.m.

REPORT OF SELECT COMMITTEE ON ELECTION CONTEST—

In accordance with K.S.A. 25-1451, a special order of business is set to consider the Report of Select Committee on Election Contest on the contest of election for the 59th District seat.

House bills p
House bills k
House bills p
House bills i
House bills k
House bills s
House bills v
House bills l
House bills b
House bills j
House resolu
6009, 6010, 601
House resolu
House concu
House concu
House concu
House concu
House concu
Executive Re
Executive Re
Senate bills j
Senate bills i
Senate bills l
Senate concu
Senate concu
Senate concu

House

Agriculture—
House bills:
House concu
House resolu
Senate bills:
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Appropriations
House bills:
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House resolu
Senate bills:
Senate concu

Calendar and
House bills:
House concu
House resolu
Senate bills:
Senate concu

FOURTEENTH DAY

HALL OF THE HOUSE OF REPRESENTATIVES,
TOPEKA, KAN., Friday, February 1, 1991, 9:00 a.m.

The House met pursuant to adjournment with Speaker pro tem Reardon in the Chair.

The roll was called with 122 members present.

Reps. Cribbs, Douville and Webb were excused on verified illness.

Prayer by Chaplain Kuner:

On this day, O God, we seek your guidance and your care, for our actions and reactions, for our decisions and indecisions, for our thoughtfulness and our weariness; Give us grace to face this day; Give us smiles to lift our spirits; Give us patience to raise our shortcomings; Give us wisdom to know your will; and give us your stirring presence.

Enter into the hearts and minds of the leaders of this world that peace may be achieved swiftly, and our young men and women may quickly return to their families. Make each of us peacemakers as we work and live in this place and always. Amen.

Speaker pro tem Reardon announced a letter was received by the office of the Speaker of the House, this morning (February 1, 1991) regarding the contested election of Karlen Christensen-Jones. Karlen Christensen-Jones withdrew her challenge and the matter became hereby moot.

PERSONAL PRIVILEGE

Rep. Whiteman rose on a point of personal privilege and read the following letter to the members of the House of Representatives:

Dear Speaker Barkis and Honorable Members of the House:

The issue of the day is who will be seated as the representative from the 59th Kansas House district. The process has been long and difficult. To vote is an important duty and the most important right in our democracy. Preserving this right requires that our election laws and voting procedures be clear.

I pursued this matter because I believed that election laws and procedures had been misinterpreted in the recount and judicial review process. As a result the will of the people in the 59th district remained in question.

The 59th district election was counted or reviewed four times. Each time the count changed. Each time, fair minded people differed in their understanding of the intent of the Kansas election laws. Even in the House, in a committee balanced between the parties, a judge's interpretations of the law as it applied to 11 separate ballots were overturned.

If we want fair elections, we must have clear laws. I urge you as a House to address this problem this session, so that no candidates will have to face what I and Rep. Wells have faced.

DAY

THE HOUSE OF REPRESENTATIVES,
ay, February 1, 1991, 9:00 a.m.

Speaker pro tem Beardon in the

and verified illness.

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On the matter of the 59th district race, I have been advised and I firmly believe that it is still possible to win this election on the floor. However, I have no desire for you to be put into the partisan storm that many believe would result.

For your sake and for the sake of the people of the 59th district, I ask you instead to get on with the business of government, addressing the programs of our new Governor and the legislative matters of your districts. I hereby withdraw my challenge.

While I am disappointed that I will not be serving with you this session, I have been assured and am certain that our laws will be made more fair as a result of my efforts.

Thank you for your sincere attention to this matter, and I wish each of you a productive session.

Very truly yours,
KARLEN CHRISTENSEN-JONES

PRESENTATION OF PETITIONS

The following petitions were presented and filed:

HP 2005, by Rep. Gregory, A petition urging that K.S.A. 21-3208 (2) should be repealed so as not to permit voluntary intoxication to be a defense to any crime, signed by Donna C. Douglas and 103 others from the Ft. Scott area.

REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following bills and resolutions were referred to Committees as indicated:

- Appropriations: **HB 2086**; **SB 36, 37**.
- Education: **HB 2085, 2090**.
- Energy and Natural Resources: **HB 2088, 2097**.
- Federal and State Affairs: **HB 2089**; **HCR 5003, 5004, 5005**.
- Labor and Industry: **HB 2087**.
- Pensions, Investments and Benefits: **HB 2092, 2093, 2094, 2095, 2096**.
- Public Health and Welfare: **HB 2091**.

INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

The following bills and concurrent resolutions were introduced and read by title:

HB 2098, by Committee on Judiciary: An act concerning civil procedure; relating to redemption of real property; amending K.S.A. 60-2414 and repealing the existing section.

HB 2099, by Committee on Judiciary: An act concerning civil procedure; relating to garnishment; amending K.S.A. 1990 Supp. 60-718 and repealing the existing section; also amending Form No. 8a in the appendix of forms following K.S.A. 1990 Supp. 61-2605 and repealing the existing form.

HB 2100, by Committee on Judiciary: An act concerning adoption; relating to the proceedings to terminate parental rights; amending K.S.A. 1990 Supp. 59-2136 and repealing the existing section.

HB 2101, by Committee on Judiciary: An act concerning children in need of care; relating to notification of grandparents; amending K.S.A. 38-1562 and K.S.A. 1990 Supp. 38-1584 and 59-2129 and repealing the existing sections.

HB 2102, by Committee on Judiciary: An act concerning child support; extending such support through high school; amending K.S.A. 1990 Supp. 38-1121 and 60-1610 and repealing the existing sections.

HB 2103, by Committee on Pensions, Investments and Benefits: An act concerning the Kansas public employees retirement system; relating to postretirement benefit increase.

HB 2104, by Committee on Public Health and Welfare: An act providing for licensure of speech-language pathologists and audiologists; establishing a speech-