

Mr. Speaker: Your Select Committee on Contested Election submits the following report on the contest of election for the 16th District seat to the House of Representatives and recommends that the report be adopted. The notice of Contest of Election was filed by John D. Kriegshauser, Contestant. Gene Rardin is the Contestee.

In the original canvass of the results of the election by the Johnson County Board of Canvassers, it was declared that Rardin received 4,132 votes and Kriegshauser received 4,128 votes. Upon request by Kriegshauser for a recount, a Special Election Board was assembled to handle the recount. Several recounts were conducted resulting in margins of four, three and two votes for Rardin. The Johnson County Election Commissioner recommended a three-vote margin be certified. The Board of Canvassers, on November 15 and 16, 2006, conducted a recount and certified the recount results, specifically, that Rardin received 4,131 votes and Kriegshauser received 4,128 votes. Rardin was declared the winner.

Following the timely filing of the Notice of Contest of Election by Kriegshauser, Chief Judge Stephen Tatum of the Johnson County District Court (Division 5) held an evidentiary hearing (Case 06cv09461). Counsel to the parties presented evidence and argument as to five disputed ballots. Counsel also addressed other issues pertinent to the contested election. Chief Judge Tatum rendered a decision on December 23, 2006, recommending a vote count of 4,131 votes to 4,129 votes in favor of Contestee Rardin. The Clerk of the District Court transmitted files and records of proceedings to the Speaker except for one unopened ballot.

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 Select Committee on Contested Election held public meetings on several different occasions. The Committee first established its rules of order and decided on the direction the Committee would proceed. The Committee discussed whether to accept any evidence related to the matters at hand but that had not been considered by the Court, and the Chairman stated the Committee's ability to request such evidence would be reserved. Counsel for the Contestant and Contestee were asked by Committee members to present arguments on the issues. Counsel did so and were asked questions by the Committee.

Following final oral arguments of the counsel for the parties, the Committee reviewed issues regarding the five disputed election ballots as well as other issues before the Committee. The Committee requested the Johnson County Election Office provide one of the disputed ballots, which had not been opened, since the ballot was ordered to be made part of the court file. The request was declined, whereupon the Committee subpoenaed the Election Commissioner to appear and produce the ballot. The Election Commissioner complied and testified regarding that ballot and the county's vote count procedures. The Committee discussed the legality of the five votes, including the one subpoenaed, and made the following recommendations.

Resolution Regarding the Five Ballots in Question

Ballot Cast by Sara Olivares

Issue: At issue was Ms. Olivares' residential address. During the Court hearing, Ms. Olivares appeared voluntarily and testified that the address provided on her voter registration card is current and has been her address for the last two years. Testimony indicated that address is located inside District 16. The Committee requested and obtained confidential testimony, which had

been sealed by the Court, relating to the question of whether the address listed on Ms. Olivares' voter registration application or another address was her true residence at the time of the election.

Court Ruling: The Judge ruled Ms. Olivares' testimony established that the address she provided on her registration is her current address and was her address at the time of the election; hence, her ballot is valid and her vote was properly submitted to the Board and counted.

Committee Recommendation: The Committee determined by unanimous vote that Ms. Olivares' true residence was the one she listed on her voter registration application. Therefore, the Committee recommends unanimously that Ms. Olivares' vote be counted and not deducted from the vote total.

Ballot Cast by Alicia Frieswyk

Issue: Ms. Frieswyk's address also was at issue. While Ms. Frieswyk did not testify at the Court hearing or sign an affidavit, other testimony was received indicating she did not live at the address indicated on her voter registration application.

Court Ruling: The Judge ruled that, while Ms. Frieswyk did not live at the address listed on her voter registration at the time she voted, no evidence was presented to indicate she lived outside the district at election time. The Judge also ruled that it cannot be determined for whom Ms. Frieswyk voted. Thus, Ms. Frieswyk's vote cannot be deducted from the vote total.

Committee Recommendation: The Committee determined by unanimous vote that a question remains as to Ms. Frieswyk's legal residence at the time of the election, but the way she voted is not known. Therefore, the Committee recommends Ms. Frieswyk's vote not be deducted from the vote total.

Ballot Cast by Heather Henderson

Issue: Heather Henderson's voter registration application card indicated her residential address (the Long address) as one that is located in District 16, but she listed her mailing address (the 91st Street address) as one that is outside the district. Additional data obtained by the Committee confirmed that the Long address is located in District 16, but not the 91st Street address. Ms. Henderson signed an affidavit indicating she voted for Rardin. There was conflicting evidence as to which address she was actually living at on election day.

Court Ruling: The Judge ruled there is no clear evidence that Ms. Henderson lived outside District 16 at the time of the election. Thus, the Judge ruled her vote was properly counted.

Committee Recommendation: The Committee recommends, by a vote of five to one, that Ms. Henderson's vote should count and not be deducted from the vote total as there was not clear evidence presented that at the time of the election Ms. Henderson lived outside of the 16th District.

Ballot Cast by Juan Mojica

Issue: The Court received testimony that Juan Mojica did not live in District 16 at election time. Mr. Mojica signed an affidavit as to his address and how he voted. However, Mr. Mojica also testified before the Court, indicating he was a registered Republican and he could remember having voted for Governor Sebelius, Congressman Moore, and Attorney General Morrison, but he could

not remember whether he voted for District 16 Representative or how he might have voted. Mr. Mojica's testimony also included a description of the process by which his affidavit was obtained. He testified that he voted at the polling location he chose because it was located between his old address and his current address and close to his house.

Court Ruling: The Judge accepted Mr. Mojica's testimony that it is not clear for whom he voted or if he voted in the District 16 race. The Judge concluded Mr. Mojica's vote could not be determined and the ballot cast by Mr. Mojica should not be removed from the vote total.

Committee Recommendation: The Committee agrees by unanimous vote that Mr. Mojica's ballot was illegally cast, but no clear indication exists as to how Mr. Mojica voted in the District 16 race. Therefore, the Committee recommends by unanimous vote that Mr. Mojica's vote not be deducted from the vote total.

Ballot Cast by Marceline Blickhan

Issue: The Johnson County Election Office neither opened nor counted Marceline Blickhan's ballot, because the office determined the signature on the ballot envelope did not match the voter registration signature on file. Testimony was received indicating Ms. Blickhan's husband and she signed each other's ballot envelopes by mistake, and that Ms. Blickhan signed an affidavit stating she had voted for Kriegshauser.

Court Ruling: The Judge ruled that Ms. Blickhan's vote for Kriegshauser should be counted, based on her signed affidavit, and Kriegshauser's vote total should be increased by one vote. The resulting vote total was 4,131 votes for Rardin and 4,129 for Kriegshauser.

Committee Recommendation: The Committee recommends by unanimous vote that Ms. Blickhan's vote should be counted, but only on the basis of the actual ballot. The Committee notes it requested the Johnson County Election Office provide Ms. Blickhan's ballot, since the ballot was ordered to be part of the court file. The Johnson County Counselor declined to submit the ballot based on the request., whereupon the Committee subpoenaed the Johnson County Election Commissioner to appear and bring Ms. Blickhan's ballot. The Election Commissioner appeared and brought the ballot, which was transferred to the custody of the Committee. The Committee opened the ballot and noted the vote, which was for Kriegshauser. The ballot will remain in the custody of the Legislature and will be preserved for the period specified by K.S.A. 25-2708, and amendments thereto, for preservation of ballots by a county election officer. On expiration of that period the ballot will be destroyed.

Resolution Regarding Adherence to Laws Governing Elections

Issue: K.S.A. 25-2908, subsection (e) requires, in part, that the county election officer present copies of provisional voters' identification and the corresponding provisional ballots to the county board of canvassers. The statute further requires the provisional ballot must be counted if the board of canvassers determines a voter's identification is valid and the provisional ballot was properly cast. The Johnson County Election Commissioner testified at the hearing, and the Chairman of the Board of Canvassers confirmed, that the Johnson County Election Commissioner did not present actual copies of the provisional voters' identification with the ballots in question.

Court Ruling: The Judge found that the portion of the statute in question was not followed strictly. However, the Judge noted, in his review of case law, that the Supreme Court has "...

declared 'violations' of the statutes prescribing protocol can be, and seem to be in the present case, unwitting omissions...." and that failure to adhere strictly does not invalidate an election.

Committee Recommendation: The Committee notes the above-cited statutory language was not followed strictly. The Committee further notes that, in his testimony before the Committee, the Johnson County Election Commissioner acknowledged the same. The Election Commissioner admitted the reason was that he was unaware, and had not been made aware prior to the election, of the statutory requirement. Further, he stated he believed other counties followed procedures similar to those of Johnson County and that he could not recall any training he had received, locally or through the Secretary of State's Office, to have addressed this particular issue. The Committee recommends the House Committee on Elections and Governmental Organization review the law to determine whether the requirement should be reinforced or modified and that the Secretary of State's Office be directed to include this procedural safeguard in its training of election offices and workers. In addition, the Johnson County Election Commissioner acknowledged that, although recounts are held in open public meetings, the County Board of Canvassers maintains a policy of not allowing anyone, including counsel for the candidates, to address the Board of Canvassers during a recount. The Committee recommends the House Committee on Elections and Governmental Organization review the law and make recommendations on whether to allow public input and comment regarding procedural concerns during a recount.

Resolution Regarding the Final Vote Count

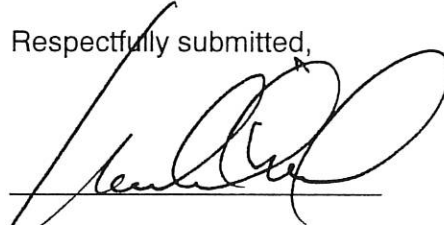
Issue: At issue is the vote count determined by Johnson County officials prior to the hearing. During the recount process the ballots were recounted several times using different methods, including scanning paper ballots, reviewing the electronic votes, and conducting hand counts. The hand recounts produced a four-vote margin; scanned recounts dropped the margin to three votes by reducing Rardin's vote total by one vote. The Johnson County Election Commissioner halted the recount process and indicated he decided to submit the three-vote margin (Rardin - 4,131 votes; Kriegshauser - 4,128 votes). In his testimony before the Court, the Election Commissioner stated he believed that hand-counting was the most accurate and reliable way to count votes during the recount process.

Court Ruling: The Judge found that the three-vote margin resulting from the recount, which was recommended by the Johnson County Election Commissioner and approved by the county's Election Board, is the official vote count. While noting that an argument could be made for a four-vote margin, the Judge agreed with the Board's certification of the three-vote margin. The Judge further recommended that Ms. Blickhan's vote, as determined by her signed affidavit, should be counted, hence increasing Kriegshauser's vote total to 4,129 votes and decreasing the margin to two votes.

Committee Recommendation: The Committee recommends, by a vote of five to one, that the three-vote margin recommended by the Johnson County Election Commissioner be accepted as a starting point, prior to the counting of Ms. Blickhan's ballot. The Committee agrees a case could

be made to accept the higher count for Rardin of 4,132 votes; however, the Committee adopts the reasoning of the Court in accepting the count of 4,131 votes. The Committee further recommends Ms. Blickhan's actual vote for Kriegshauser be counted, thus decreasing the margin to two votes. The Committee therefore recommends Rardin be declared the winner.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael R. O'Neal", written over a horizontal line.

Rep. Michael R. O'Neal, Chairperson
Select Committee on Contested Elections

February 8, 2007

Rep. Tom Sawyer
Rep. Jim Ward
Rep. Michael J. Peterson

Rep. Gary K. Hayzlett
Rep. Jene Vickrey

Approved: 5-29-07
Date

MINUTES OF THE SELECT COMMITTEE ON CONTESTED ELECTIONS

The meeting was called to order by Chairman Mike O'Neal at 8:00 A.M. on February 8, 2007 in Room 241-N of the Capitol.

All members were present.

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

Staff provided the committee with a draft report. The committee directed staff to have the report reflect that Mrs. Blickhan's ballot was brought to the committee by the Johnson County Election Commissioner and transferred the custody of that record to the committee. The committee opened the ballot and noted the vote, which was for Mr. Kriegshauser. The ballot will remain in the custody of the Legislature and will be preserved for the period of time specified in K.S.A. 25-2708, at the end of which time the ballot will be destroyed.

Representative Hayzlett made the motion to adopt the committee report, as amended. Representative Peterson seconded the motion. The motion carried.

The meeting was adjourned.

A copy of the final report can be found by viewing ([Attachment 1](#)).