

Approved: 3/25/08
Date

MINUTES OF THE SENATE ELECTIONS AND LOCAL GOVERNMENT COMMITTEE

The meeting was called to order by Chairman Tim Huelskamp at 1:30 P.M. on January 29, 2008 in Room 423-S of the Capitol.

Senator Donald Betts absent.

Committee staff present:

Martha Dorsey, Kansas Legislative Research Department
Ken Wilke, Revisor of Statutes
Jerry Donaldson, Legislative Assistant
Zoie Kern, Committee Assistant

Conferees appearing before the committee:

Carol Williams - Governmental Ethics
Brad Bryant - Deputy Assistant Secretary of State
Senator Julia Lynn

Others attending:

See attached list.

Senator Tim Huelskamp called the meeting to order.

Senator Julia Lynn introduced three bills (Attachment 1) for consideration.

Discussion.

Motion made by Senator Wilson and seconded by Senator Reitz to introduce the bills.

Motion carried.

Brad Bryant Deputy Assistant to Secretary of State introduced three bills for consideration (Attachment 2).
Discussion.

Motion made by Senator Lynn and seconded by Senator Donavon to introduce the bills.

Motion carried.

Carol Williams Director of Governmental Ethics spoke regarding the definition of "Lobbying" (Attachment 3).

Discussion.

Meeting adjourned.

Respectfully submitted,

Zoie Kern, Committee Assistant

STATE CAPITOL—402-S
TOPEKA, KANSAS 66612
(785) 296-7382
IN SESSION: lynn@senate.state.ks.us



SENATOR JULIA LYNN

COMMITTEE ASSIGNMENTS
JUDICIARY
FEDERAL AND STATE AFFAIRS
ELECTIONS AND LOCAL GOVERNMENT
VICE-CHAIR, CHILDREN'S ISSUES (JOINT)
SENATE PRESIDENT'S TASK FORCE
ON HEALTHCARE

INTERIM INFORMATION:
18837 W. 115TH TERR.
OLATHE, KANSAS 66061

SENATE COMMITTEE ON ELECTIONS AND LOCAL GOVERNMENT

Request for Introduction of Committee Bills

Julia Lynn, Senator, Senate District #9

January 29, 2008

Mr. Chairman and Members of the Committee:

I request the introduction of two committee bills and one resolution.

BILLS:

1. DeSoto/Johnson County Riverfront Authority - This bill would create a Riverfront Authority and prescribe the powers and duties thereof.
2. DeSoto Fire Department consolidation - This bill would consolidate the City of DeSoto Fire Department and the Johnson County Fire District #3.

RESOLUTIONS:

1. Native American Apology - This Resolution would be a CONCURRENT RESOLUTION supporting a United States congressional apology to Native Americans and offering an apology to native peoples on behalf of the state of Kansas.

Thank you for your consideration.

*Elections
and
Local Government
1-29-08
Attachment 1*

RON THORNBURGH
Secretary of State



Memorial Hall, 1st Floor
120 S.W. 10th Avenue
Topeka, KS 66612-1594
(785) 296-4564

STATE OF KANSAS

Senate Committee on Elections and Local Government

Request for Introduction of Committee Bills

Brad Bryant, Deputy Assistant Secretary of State
Elections and Legislative Matters

January 29, 2008

Mr. Chairman and Members of the Committee:

The Secretary of State requests the introduction of three committee bills:

1. Ballot rotation—This bill would allow for automation and improved accuracy of the rotation of candidates' names on ballots.
2. No inactive voters in mail ballot elections—This bill would change the rule for local question submitted elections conducted by mail ballot so that inactive voters, as defined in the federal National Voter Registration Act of 1993, would not automatically be mailed ballots.
3. Mobile polls—This bill would establish a procedure for the county election officer to send a traveling election board to nursing homes and assisted living centers to increase voting opportunities for residents of the facilities.

Thank you for your consideration.

*Elections and Local
Government 1-29-08
attachment 2*

46-222. "Lobbyist" defined; exceptions. (a) "Lobbyist" means: (1) Any person employed in considerable degree for lobbying; (2) any person formally appointed as the primary representative of an organization or other person to lobby in person on state-owned or leased property; or (3) any person who makes expenditures in an aggregate amount of \$100 or more, exclusive of personal travel and subsistence expenses, in any calendar year for lobbying.

(b) Lobbyist shall not include: (1) Any state officer or employee engaged in carrying out the duties of their office; (2) the employer of a lobbyist, if such lobbyist has registered the name and address of such employer under K.S.A. 46-265 and amendments thereto; (3) any nonprofit organization which has qualified under paragraph (3) of subsection (c) of section 501 of the internal revenue code of 1954, as amended, which is interstate in its operations and of which a primary purpose is the nonpartisan analysis, study or research of legislative procedures or practices and the dissemination of the results thereof to the public, irrespective of whether such organization may recommend a course of action as a result of such analysis, study or research; (4) any justice or commissioner of the supreme court or judge of the judicial branch or employee or officer of the judicial branch or, any member of a board, council or commission who is appointed by the supreme court or who is elected or, appointed to exercise duties pertaining to functions of the judicial branch, when such person is engaged in performing a function or duty for the judicial branch; or (5) any appointed member of an advisory council, commission or board, who serves without compensation other than amounts for expense allowances or reimbursement of expenses as provided for in subsection (e) of K.S.A. 75-3223 and amendments thereto, when such member is engaged in performing a function or duty for such council, commission or board.

History: L. 1974, ch. 353, § 8; L. 1975, ch. 272, § 2; L. 1991, ch. 150, § 23; July 1.

46-225. "Lobbying" defined; exceptions; employment of legislator as a lobbyist prohibited.

(a) "Lobbying" means: (1) Promoting or opposing in any manner action or nonaction by the legislature on any legislative matter or the adoption or nonadoption of any rule and regulation by any state agency; or

(2) entertaining any state officer or employee or giving any gift, honorarium or payment to a state officer or employee in an aggregate value of \$40 or more within any calendar year, if at any time during such year the person supplying the entertainment, gifts, honoraria or payments has a financial interest in any contract with, or action, proceeding or other matter before the state agency in which such state officer or employee serves, or if such person is the representative of a person having such a financial interest.

(c) "Lobbying" does not include any expenditure from amounts appropriated by the legislature for official hospitality.

(d) "Lobbying" does not include representation of a claimant on a claim filed by the claimant under K.S.A. 46-907 and 46-912 to 46-919, inclusive, and amendments thereto in proceedings before the joint committee on special claims against the state.

(e) "Lobbying" does not include bona fide personal or business entertaining.

(f) No legislator may be hired as a lobbyist to represent anyone before any state agency.

History: L. 1974, ch. 353, § 11; L. 1975, ch. 272, § 3; L. 1981, ch. 171, § 43; L. 1991, ch. 150, § 24; July 1.

19-61-1. Legislative matters. (a) General. Promoting or opposing in any manner action or nonaction by the legislature on any legislative matter constitutes lobbying. Legislative matters include any bills, resolutions, nominations, or other issues or proposals pending before the legislature or any committee, subcommittee, or council thereof. An issue or proposal is pending before any such body if it is being directly considered by such body, if it has been communicated to such body or a member thereof even if not directly considered by it, or if it is an issue subject to continuing review by any such body.

(1) Any communication which is intended to advocate action or nonaction by the legislature on a legislative matter, including communications with other persons with the intent that such persons communicate with legislators in regard thereto, constitutes lobbying.

(2) The provision of entertainment, recreation or gifts to any state officer or employee involved in action or nonaction by the legislature on any legislative matter, except those provided as bona fide personal or business entertainment, recreation or gifts, constitutes lobbying.

The fact that a particular activity constitutes "lobbying" does not necessarily mean that an individual must register as a lobbyist. See K.A.R. 19-62 on the issue of registration.

(b) Exceptions. The communication of factual material which is not intended to promote or oppose action or nonaction on a legislative matter and which is not accompanied by active advocacy does not constitute lobbying. (Authorized by K.S.A. 1991 Supp. 46-253; implementing K.S.A. 1991 Supp. 46-225; effective, E-77-7, March 19, 1976; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977; amended May 1, 1980; amended June 22, 1992.)

FACT: Without new coal-fueled plants in our state, experts predict that electric bills will skyrocket and Kansans will be more dependent than ever on hostile, foreign energy sources.

Call your state legislators today at 1-800-432-3924 and tell them our state's electricity must come from clean, affordable, reliable coal — America's energy future.

Sources: U.S. Department of Energy, Energy Information Administration
Paid for by Kansans for Affordable Energy, Roy Dixon, Treasurer

CLAIM #2: "As demand for electricity increases in Kansas and across the country, our state has the opportunity to be a leader in the fight to reduce our reliance on foreign energy by utilizing America's most abundant fuel resource - clean coal."

ALL FALSE for the following reasons:

"Reduce our reliance on foreign energy"? Rejecting coal will NOT increase our reliance on foreign energy if we stick with American energy sources like natural gas, wind and solar.

By turning away from coal, Kansas can be a leader not just in using American energy, but clean energy that doesn't degrade health, the environment and economic development with pollution.

American. Abundant. Natural gas is as American as coal is (see #1) - and abundant - but adds the profound advantage of being clean, with half the carbon emissions of coal and virtually no mercury or particulates. Coal emits a lot of both.

The vast abundance of natural gas has just begun to be understood. Recent studies confirm North America has a 120-year supply. Source: Potential Supply of Natural Gas in the U.S., Golden, CO, Sept. 2007, Canadian Potential Gas Agency, Dec. 2006. Proved natural gas reserves are at their highest levels in 30 years. Source: LNG Intelligence Nov. 7, 2007.

There is no such product as so-called "clean coal." The term is misleading. Look at coal's long list of pollutants and see if you think it's "clean."

In fact, "clean coal" is only a GOAL, not a reality. A recent MIT study, "The Future of Coal," found cleaner coal technologies need more than 10 years of "research, development and demonstration" before they'll be ready to use.

Risky, so-called clean coal technology would require pumping astounding quantities of liquefied carbon dioxide into Kansas soil, a bad idea.

CLAIM #3: "Unfortunately, the Sebelius Administration rejected a plan to build a much-needed, coal-fueled power plant near Holcomb. The implications of this decision - higher electric bills, lost economic activity and reduced energy security - will affect Kansas for years to come."

The plant rejection was fortunate and the implications described are

ALL FALSE:

"A much-needed plant" to avoid "lost economic activity"? FALSE. Western Kansas deserves jobs that don't jeopardize the health and well-being of its citizens. Remember, as soon as construction is over, most of the jobs are gone, but the pollution would burden generations of Kansans, forever. A gas-fired plant should be built and linked to Kansas wind power. That's an economic plan with a future.

"Higher electric bills"? In fact, those will result from choosing coal. Since December 2003, Powder River Basin coal prices have shown a 300% increase and coal transportation costs have been no less volatile. Source: 2007 UtilPoint@ International, Inc.

Add coal pollution's well-documented harm to health and the medical care it requires. Add the price of building coal plants, which is about four times the cost of a natural gas plant. And the carbon pollution taxes we all know are imminent will just add to the tab.

Meanwhile, natural gas prices have increased only about 46% in the past five years - less than oil (up 143%), steel (up 150%), milk (up 100%) and many other commodities.

"Reduced energy security"? FALSE. Again, the natural gas Americans use is American. (For more, see #1 and #2.)

CLAIM #4: "Without the new, next-generation coal-fueled plants, Kansas will be captive to high-priced natural gas, allowing hostile foreign countries to control the energy policy of Kansas and America. We are already being held hostage to some of these countries for oil."

ALL FALSE for the following reasons:

"New, next-generation" coal plants? If the

proposed plant were built, Kansas would still be without a "next-generation" model - because the technology doesn't yet exist. For the foreseeable future, it's risky, experimental and utterly unaffordable (see #3).

"High-priced"? FALSE. (That's the pot calling the kettle black!) We now know the old "coal is cheap" claim is wrong because of the high cost of pollution and the high cost of building coal plants (Holcomb's price at \$3.5 billion would be paid by Kansans and would probably be much higher). Meanwhile, natural gas is a clean-burning, all-American bargain. No "hostile foreign country" needed. Plus, less heart and lung disease, asthma and other serious pollution-caused diseases.

CLAIM #5: "The choice is simple ... clean coal from Middle America versus expensive gas from the Middle East."

FALSE: None of Kansas' natural gas comes from the countries named in the ad. In fact, more than 99% of the natural gas Americans use comes from North America. (See #1.) Do not be misled on this important fact!

CLAIM #6: "Natural gas prices have more than tripled since 1999."

TRUE: However, coal has also demonstrated that it is not immune to higher prices, increasing 300% during the past few years, and prices are still rising (see #4). On a BTU-equivalent basis, natural gas prices are roughly 50% of oil.

CLAIM #7: "Domestic natural gas production is flat and well below peak production levels. Liquefied Natural Gas Imports have risen 44% this year alone."

FALSE: U.S. natural gas production rose by 2.5% in 2006 (1.25 billion cubic feet a day) and 2007 production is likely to be even higher. Potential gas reserves in the U.S. are up by 17% over two years ago.

Most of the new production is coming from the Mid-Continent region, which includes Kansas.

CLAIM #8: "Government experts predict that growth in natural gas demand will have to be met by imports - much of it coming from hostile countries in unstable parts of the world."

FALSE: Again, more than 99% of the natural gas Americans use comes from North America. See "abundant supply" discussion above. (Identify your "government experts," we're glad to get them the facts.)

CLAIM #9: "The U.S. has enough coal for the next 250 years, and it's cleaner than ever before."

FALSE: Coal is NOT clean and "cleaner than ever before" is an empty claim. There is no proven technology to remove carbon, mercury, particulates or other pollutants from coal emissions. (See the MIT study, #2.) The DOE Clean Coal Technology Roadmap defines the future benefit of "clean coal" as being near-zero CO2 plants, but the proposed Holcomb plant would emit 10 million tons of CO2 each year - making it one of the largest polluters in Kansas.

(Source: Sierra Club fact sheet. <http://www.kansas.sierraclub.org/Wind/Factsheet-Myth-vs-Facts.pdf>)

CLAIM #10: "Without new coal-fueled plants in our state, experts predict that electric bills will skyrocket and Kansans will be more dependent than ever on hostile foreign energy sources."

FALSE: Kansas would only receive 15% of the 1400 megawatts of power the proposed coal-fueled plant at Holcomb would generate (210 MW); because 85% of its output would go out of state. Kansans, though, would be stuck with 100% of the plant's pollution! It would be far wiser, cheaper and more environmentally friendly to build a natural gas/wind power system for that 210 MW of capacity that Kansas needs.

Know Your Power Kansas is a coalition funded by Chesapeake Energy Corporation.

PO Box 604
Shawnee Mission KS
66201

**KNOW
POWER
net**

Call your legislators at 1-800-432-3924 to let them know where you stand - and for more, visit KnowYourPower.net.

November 28, 2007

Opinion No. 2007-14

TO ALL INTERESTED PERSONS:

Pursuant to K.S.A. 25-4159, the Kansas Governmental Ethics Commission takes this opportunity to issue its opinion regarding the use of campaign funds for vehicle expenses incurred for legitimate campaign purposes or office-holder expenses under the Campaign Finance Act, K.S.A. 25-4142 *et seq.*

OPINION:

K.S.A. 25-4157a, states in pertinent part:

“(a) No moneys received by any candidate or candidate committee of any candidate as a contribution under this act shall be used or be made available for the personal use of the candidate and no such moneys shall be used by such candidate or the candidate committee of such candidate except for:

- (1) Legitimate campaign purposes;
- (2) expenses of holding political office;
- ...

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

Candidates for political office may use campaign funds to pay for otherwise un-reimbursed vehicle expenses incurred as a result of holding political office or for legitimate campaign purposes. In the past the Commission permitted candidates to be reimbursed for either the amount of vehicle expenses incurred or for mileage. Due to the difficulty in determining the allocation of vehicle expenses between a candidate’s personal use of a vehicle and the candidate’s use of a vehicle for holding political office or for campaign purposes, the Commission now determines that beginning January 1, 2008, the use of campaign funds to pay for otherwise un-reimbursed vehicle expenses will be limited to the state mileage reimbursement rate. When claiming reimbursement for mileage from campaign funds, the treasurer, pursuant to K.S.A. 25-4147 and K.A.R. 19-27-3, shall keep detailed records for mileage expenditures showing the dates of travel, the necessity for and specific purpose of the travel, and the actual mileage traveled. If a candidate does not receive reimbursement during the reporting period in which the mileage expense was incurred, the expense must be listed as an account payable on the candidate’s receipts and expenditures report for each reporting period until the reimbursement is paid.

Sincerely,

Sabrina K. Standifer, Chairwoman
by Direction of the Commission

SKS:DV:dlw

October 17, 2007

Opinion No. 2007-12

TO ALL INTERESTED PERSONS:

Pursuant to K.S.A. 25-4159, the Kansas Governmental Ethics Commission takes this opportunity to issue its opinion to clarify questions regarding the records and supporting documentation required to be kept under the Campaign Finance Act, K.S.A. 25-4142 *et seq.*, for contributions received through PayPal or other online merchant account providers.

OPINION:

K.S.A. 25-4147, which sets out the duties of every treasurer of a candidate or party or political committee, includes the following:

“(a) Every treasurer shall keep detailed accounts of *all* contributions and other receipts received and *all* expenditures made by or on behalf of the treasurer’s candidate or committee.

(b) Accounts of any treasurer may be inspected under conditions determined by the commission, and shall be preserved for a period to be designated by the commission.” (Emphasis added.)

K.A.R. 19-27-4 requires that treasurers’ accounts be preserved for six years for an office with a four year term and for party and political committees, and for four years for an office with a two year term.

K.A.R. 19-27-2 details the contribution records to be kept by treasurers, and states in pertinent part as follows:

“(a) Each treasurer shall maintain a complete record of *all* contributions as follows:

- (1) A detailed account of *all* contributions . . . which include:
 - (A) The full name and address of the person making the contribution;
 - (B) The occupation of each individual contributor who contributes more than \$150, or if the individual contributor is not employed, then the occupation of the contributor’s spouse;
 - (C) A description of the contribution as cash, check, in-kind, loan (including rate of interest, term, guarantor, and endorser);
 - (D) The date received;
 - (E) The amount; and
 - (F) The cumulative amount given by the contributor which is allocable to the primary or general election period.” (Emphasis added.)

The question has arisen as to what kinds of records a treasurer must keep when a contribution is received through PayPal or other online merchant account providers (providers) who process transactions. It is our understanding that these providers, including PayPal, act as an intermediary to securely receive funds from a contributor’s credit or debit card or bank account for a candidate or committee who has established an account with the provider. The provider then notifies the candidate or committee by e-mail that they have received a contribution. The provider charges the candidate or committee a fee to process the transaction. The fee is withheld from the contribution before it is transferred to the candidate

or committee.

To comply with the Campaign Finance Act, the treasurer should receive and keep sufficient supporting documentation to fully substantiate each contribution received through a provider, including all information required by K.A.R. 19-27-2. The candidate or treasurer should contact the provider to request that the required information be provided for all contributions they process. If the provider is unable to provide all of the necessary information, it is the treasurer's duty to obtain the information regarding each contribution directly from the contributor. A copy of all supporting documentation for each contribution should be kept by the treasurer for either six or four years as provided by K.A.R. 19-27-4.

Further, the entire contribution, before any fee is withheld, should be included as the amount of the contribution on reports filed by the treasurer. The provider's fee that is withheld should be reported as an expenditure by the campaign or committee. Supporting documentation regarding the fee for each contribution should be received and maintained by the treasurer.

Sincerely,

Sabrina K. Standifer, Chairwoman
by Direction of the Commission

SKS:DV:dlw

August 23, 2007

Opinion No. 2007-11

TO ALL INTERESTED PERSONS:

Pursuant to K.S.A. 25-4159, the Kansas Governmental Ethics Commission takes this opportunity to issue its opinion to clarify questions regarding the use of personal and campaign addresses and email communications under the Campaign Finance Act, K.S.A. 25-4142 *et seq.*

QUESTIONS:

1. May legislators and other state and local officers include their campaign or personal website, email, or postal addresses in newsletters or other communications that are generated or distributed using public funds, machinery, equipment or supplies?
2. Can a website, email or other internet communication constitute political advertising subject to the disclosure statements required by K.S.A. 25-4156, as amended by L. 2007, Ch. 196, § 4?

OPINION:

Regarding the first question, K.S.A. 25-4169a prohibits the use of public funds, equipment or supplies to expressly advocate the election or defeat of any candidate as follows:

“(a) No officer or employee of the state of Kansas . . . shall use or authorize the use of public funds or public vehicles, machinery, equipment or the time of any officer or employee of . . . such governmental agency . . . to expressly advocate the nomination, election or defeat of a clearly identified candidate to state or local office. . . .”

The prohibitions of K.S.A. 25-4169a apply only to express advocacy. K.S.A. 2006 Supp. 25-4143(h) defines the phrase “expressly advocate the nomination, election or defeat of a clearly identified candidate” to mean:

“any communication which uses phrases including, but not limited to:
 (1) ‘Vote for the secretary of state’; (2) ‘re-elect your senator’; (3) ‘support the democratic nominee’; (4) ‘cast your ballot for the republican challenger for governor’; (5) ‘smith for senate’; (6) ‘Bob Jones in ‘98’; (7) ‘vote against Old Hickory’; (8) ‘defeat accompanied by a picture of one of more candidates; or (9) ‘Smith’s the one.’”

It is our opinion that a website, email or postal address expressly advocates the nomination, election or defeat of a candidate if that address contains words meeting the definition of express advocacy pursuant to K.S.A. 2006 Supp. 25-4143(h). Therefore, including a campaign or personal website, email or postal address in a communication generated or distributed using public funds, machinery or equipment is a violation of the Campaign Finance Act if that address expressly advocates for or against a candidate. Official state or local office website, email or postal addresses issued and maintained by a state or local government would not be considered express advocacy.

The second question concerns the application of K.S.A. 25-4156, as amended by L. 2007, Ch. 196, § 4, which defines corrupt political advertising as follows:

“Corrupt political advertising of a state or local office is: . . .

(C) publishing or causing to be published any brochure, flier or other political fact sheet which expressly advocates the nomination, election or defeat of a clearly identified candidate for a state or local office, unless such matter is followed by a statement which states: 'Paid for' or 'Sponsored by' followed by the name of the chairperson or treasurer of the political or other organization sponsoring the same or the name of the individual who is responsible therefor.

The provisions of this subsection (C) requiring the disclosure of the name of an *individual* shall not apply to *individuals* making expenditures in an aggregate amount of less than \$2,500 within a calendar year. . . ." (Emphasis added.)

The question has arisen whether the disclosure requirements of this statute apply to a website, email or other internet communication that expressly advocates for or against a candidate. In Opinion No. 2004-02 we considered whether material posted on a website was published, and stated as follows:

"The American Heritage Dictionary defines the word 'publish' as: '1) To prepare and issue (printed material) for public distribution or sale. 2) To bring to the public attention: announce.' *The American Heritage Dictionary of the English Language*, Fourth Edition Copyright © 2000 by Houghton Mifflin Company. The Commission now determines that information posted on a website has been brought to the public's attention and therefore, has been published. Consequently, such material requires a 'paid for by' disclaimer if the material expressly advocates the nomination, election or defeat of a clearly identified candidate for state or local office."

It is our opinion that an email or other internet communication that expressly advocates will be considered political advertising if it is published. K.A.R. 19-20-4 clarifies that business cards, door hangers, postcards and fund-raiser invitations are subject to the disclosure requirements of K.S.A. 25-4156, as amended by L. 2007, Ch. 196, §. 4. Both the statute and the regulation were enacted before the widespread use of political internet communications; however, we believe the same analysis used for communications written on paper and distributed by hand or through the postal service should be used for internet communications to determine whether they constitute political advertising subject to the disclosure requirements of K.S.A. 25-4156, as amended by L. 2007, Ch. 196, § 4. Therefore, an email or internet communication expressly advocating the nomination, election or defeat of a clearly identified candidate for a state or local office may be published political advertising depending on its breadth of distribution. If the email or other internet communication is distributed so that it is brought to the public's attention, it will require a "paid for" or "sponsored by" disclosure statement. It should be noted that these requirements do not apply to *individuals* who spend less than \$2,500 within a calendar year.

Sincerely,

Sabrina K. Standifer, Chairwoman
by Direction of the Commission

SKS:DV:dlw

March 21, 2007

Opinion No. 2007-07

Michael Pirner
Campaign Manager for Senator Julia Lynn
9121 Renner Blvd., #214
Lenexa, Kansas 66219

Dear Mr. Pirner:

This opinion is in response to your letter received by e-mail on February 6, 2007, in which you request an opinion from the Kansas Governmental Ethics Commission concerning the Campaign Finance Act (K.S.A. 25-4142 *et seq.*). We note at the outset that the Commission's jurisdiction concerning your questions is limited to the application of K.S.A. 25-4142 *et seq.*, and whether some other statutory system, common law theory or agency rule or regulation applies to your inquiry is not covered by this opinion.

FACTUAL STATEMENT:

We understand that you are asking for this opinion in your capacity as Campaign Manager for Senator Julia Lynn, and as a person who maintains e-mail accounts and helps with mailings for other Kansas legislators. You indicate that in your e-mail lists for Senator Lynn, you keep a separate list for lobbyists so that you do not accidentally send them solicitation requests during the legislative session. You also maintain a website for Senator Lynn which includes information on how to donate to her campaign. Each week Senator Lynn e-mails a newsletter that contains legislation updates and information on her activities in the Legislature. Because this newsletter contains a link to the Senator's campaign website, you have not sent the newsletter to any lobbyists. However, you ask for clarification as to whether including the link constitutes a solicitation of contributions which cannot be sent to lobbyists during the legislative session.

QUESTION:

1. May a legislator send an electronic newsletter that contains a link to the legislator's campaign website to a lobbyist during the legislative session?

2. Does any e-mail sent to a lobbyist, which includes a reference to a website containing information on how to make a contribution to a legislator's campaign, constitute solicitation of a contribution even if the e-mail does not include any reference to solicitation of a contribution?

OPINION:

K.S.A. 25-4153a, which limits solicitations of contributions during the legislative session, states as follows:

“(a) No registered lobbyist, political committee or person, other than an individual, shall make a contribution after January 1 of each year and prior to adjournment sine die of the regular session of the legislature or at any other time in which the legislature is in session to a:

- (1) Legislator;

- (2) candidate for membership in the legislature;
- (3) state officer elected on a statewide basis;
- (4) candidate for state officer elected on a statewide basis;
- (5) candidate committee of persons described in paragraphs (1) through (4); or
- (6) political committee established by a state committee of any political party and designated as a recognized political committee for the senate or house of representatives.

(b) No legislator, officer, candidate or committee described in paragraphs (1) through (6) of subsection (a) shall accept or solicit any contribution as defined by K.S.A. 25-4143 and amendments thereto, from any registered lobbyist, political committee or person, other than an individual, during such period of time described in subsection (a)."

K.S.A. 2006 Supp. 25-4143(e)(1) defines "contribution" as follows:

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

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

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

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

(E) the purchase of tickets or admissions to, or advertisements in journals or programs for, testimonial events;

(F) a mailing of materials designed to expressly advocate the nomination, election or defeat of a clearly identified candidate, which is made and paid for by a party committee with the consent of such candidate."

Your questions depend on whether including a link or reference to a legislator's campaign website in an electronic newsletter or other e-mail message constitutes the soliciting of a contribution from the recipient. The Campaign Finance Act prohibits a legislator from soliciting campaign contributions from lobbyists, and any other person other than an individual, after January 1 and prior to adjournment sine die of the Legislature. The Campaign Finance Act does not directly address the use of e-mails and websites, and does not define the term "solicit."

"Solicit" is defined by Webster's New World College Dictionary as "to ask or seek earnestly or pleadingly; appeal to or for." (Third Edition, 1996, p. 1276). Webster's Third New International

Dictionary defines “solicit” as “to endeavor to obtain by asking or pleading; to seek eagerly or actively.” (1993, p. 2169). Black’s Law Dictionary does not define “solicit” but gives the following definition for “solicitation:” “The act or an instance of requesting or seeking to obtain something; a request or petition.” (8th Edition, 2004, p. 1427). These definitions all imply an overt action by a person in order to solicit a contribution.

The mere inclusion of a website link in an e-mail message does not by itself ask for a contribution, unless that website link contains words such as “contribute” or “donate.” By “website link” we mean the words and symbols contained in the link, not what is contained in the website that is accessed after clicking on the link. Therefore, we opine that an e-mail message or electronic newsletter that includes a website link to a legislator’s campaign, or to another website that provides information for making a contribution, does not solicit a contribution if the e-mail message or newsletter does not ask or encourage the recipient to make a contribution or to click on the link or visit the website to make a contribution, and the link itself does not include words such as “contribute” or “donate.”

The response to both of your questions depends on the content of the electronic newsletter or e-mail message and the content of the website link. If the e-mail message, newsletter, or website link refers to making a contribution or invites the recipient to visit a website for the purpose of making a contribution, then it solicits a contribution and would be prohibited by K.S.A. 25-4153a (b) from being sent to a lobbyist, or any other person other than an individual after January 1 and prior to adjournment sine die of the Legislature. If the e-mail message or newsletter contains a website link that does not include words such as “donate” or “contribute,” and the e-mail message or newsletter does not invite or encourage the recipient to visit the link for the purpose of making a contribution, then the e-mail message or newsletter is not a solicitation subject to the limitations of K.S.A. 25-4153a (b), and may be sent to anyone, including lobbyists during the legislative session.

Sincerely,

Sabrina K. Standifer, Chairwoman
by Direction of the Commission

SKS:DV:dlw

January 19, 2006

Opinion No. 2006-01

Jim Skelton
Wichita City Council Member
City Hall, First Floor
455 North Main Street
Wichita, KS 67202-1698

Dear Mr. Skelton:

This opinion is in response to your letter dated December 15, 2005, in which you request an opinion from the Kansas Governmental Ethics Commission concerning the Campaign Finance Act (K.S.A. 25-4142 *et seq.*). We note at the outset that the Commission's jurisdiction concerning your question is limited to the application of K.S.A. 25-4142 *et seq.*, and whether some other statutory system, common law theory or agency rule or regulation applies to your inquiry is not covered by this opinion.

FACTUAL STATEMENT:

We understand that you are asking for this opinion in your capacity as a member of the Wichita City Council. Your question concerns paying for the mailing of newsletters to your constituents. You state that the newsletters do not pertain in any way to your campaign.

QUESTION:

Is it permissible under the Campaign Finance Act for you to use campaign funds for the mailing of newsletters to your constituents?

OPINION:

K.S.A.25-4157a, which addresses the use of campaign contributions, specifically allows a candidate to use campaign contributions for "expenses of holding political office." Costs associated with mailing newsletters to constituents are an expense of holding political office. Therefore, it is permissible for you to use campaign funds for the mailing of newsletters to your constituents.

Sincerely,

Sabrina K. Standifer, Chairwoman
by Direction of the Commission

SKS:DV:dlw