

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 March 12, 2008 in Room 423-S of the Capitol.

All members were present.

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:

Brad Bryant-Secretary of States Office, Representative Mike O'Neal, Kimberly Winn-League of Kansas Municipalities

Others attending:

See attached list.

Ken Wilke Revisor of Statues Office gave summary of **HB 2683**.

Brad Bryant, Deputy Assistant Secretary of State Elections and Legislative Matters gave testimony as a proponent to **HB 2683** (Attachment 1).

Discussion.

Closed hearing on **HB 2683**.

Open hearing on **HB 2648**.

Ken Wilke gave summary on **HB 2648**.

Representative Mike O'Neal testified as a proponent to **HB 2648** (Attachment 2, 3, and 4).

(Attachment 5) submitted for Committees review.

Kimberly Winn, Director of Policy Development and Communications gave testimony in opposition to **HB 2648**. (Attachment 6).

Discussion.

Hearing closed on **HB 2648**.

Continued hearing on **SB 621**.

Motion made by Senator Pyle and second by Senator Lynn to move **SB 621** favorable as amended.

Discussion.

Senator Wilson stated he is not supporting **SB 621**.

Senator Donovan stated he is not supporting **SB 621**.

Discussion.

Senator Lynn withdrew her second of the motion.

Discussion.

Meeting adjourned.

Respectfully submitted,

Zoie Kern Committee Assistant



RON THORNBURGH  
Secretary of State



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STATE OF KANSAS  
Senate Committee on Elections and Local Government

Testimony on House Bill 2683

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

March 12, 2008

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to testify in support of House Bill 2683. This bill was proposed by the Secretary of State to codify in state law federal requirements establishing expedited election procedures to fill vacancies in the United States House of Representatives. This law would be effective only in extraordinary circumstances resulting in vacancies in 100 or more seats in the U.S. House of Representatives and, in our case, if one of those vacancies is in Kansas.

The federal law, 2 USC 8(b), was passed in 2006 in response to the events of September 11, 2001. The major provisions of the law are as follows:

- The Speaker of the U.S. House of Representatives announces that extraordinary circumstances exist.
- The chief executive of the state in which a vacancy exists issues a writ of election to fill the vacancy by special election.
- The election is held within 49 days after the Speaker's announcement unless another election is to be held within 75 days.
- Parties may nominate candidates either (1) within 10 days of the Speaker's announcement, or (2) by primary election held in the state.

Under current Kansas law, vacancies in seats in the U.S. House of Representatives are filled as follows:

- Within five days of the occurrence of the vacancy, the Governor issues a proclamation calling an election.
- An election is held 45 to 60 days after issuance of the proclamation.
- If there are regularly scheduled elections within 30 to 90 days, the special election is held in conjunction with the regular election.
- Parties may nominate candidates with specific deadlines for certifying them to the Secretary of State.

House Bill 2683 will not change current procedures. Its provisions will be used only in extraordinary circumstances as determined by the Speaker of the U.S. House of Representatives. The intent of the bill is to operate as much as possible under the current provisions of Article 35 of Chapter 25.

We recommend the committee report House Bill 2683 favorably for passage to bring Kansas law into compliance with federal law. Thank you for your consideration.

STATE OF KANSAS  
HOUSE OF REPRESENTATIVES

MICHAEL R. (MIKE) O'NEAL

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HUTCHINSON/NORTHEAST RENO COUNTY

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KANSAS COMMISSION ON JUDICIAL PERFORMANCE

TESTIMONY ON H.B. 2648  
BEFORE THE SENATE ELECTIONS & LOCAL GOVERNMENT  
COMMITTEE  
Rep. Mike O'Neal  
March 12, 2008

Chairman Huelskamp and members of the Committee, thank you for the opportunity to appear on H.B. 2648, a bill that fills a void in current law dealing with mayoral appointments.

The need for the bill came about as the result of a statutory mayoral appointment to a local library board in S.E. Kansas. I do some work from time to time for the library system and was asked how to resolve a situation where a mayor makes an appointment under the statute but the commission or council then fails or refuses to confirm the appointment. I was surprised to learn that Kansas law is silent as to how such a stalemate is resolved.

In researching the issue, I was directed to the League of Kansas Municipalities and, specifically, their GOVERNING BODY HANDBOOK.

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*Elections and Local  
Government 3-12-08  
Attachment 2*

I have attached the pertinent portions of their Handbook as they relate to this question. The League reports that conflicts between mayors and councils often occur and that “no solution to this impasse is provided by state law.” One has to go back to a Kansas Supreme Court decision from 1912 to find where the issue has been addressed, and in that case (*State v. Lander*, 87 Kan. 474) the Court merely directed that the council act in good faith. No procedure exists in case law or statute to address a situation where the council’s failure or refusal to act is in bad faith or without legal cause.

The absence of a procedure to address the stalemate thwarts the legislative intent behind mayoral appointments and provides councils with, essentially, the power of a “pocket veto”, the effect of which is to create a “holdover” appointee situation or a void with respect to a vacant position. H.B. 2648, as amended by the House Committee provides a balanced solution. Mayors would retain their statutory right to make certain appointments. Councils would retain the ultimate right to confirm, but rejection of an appointment would take an affirmative act and would have to be based on unfitness or lack of qualification to hold the position, all of which is consistent with the position and advice contained in the League’s GOVERNING BODY HANDBOOK.

Although the situation that brought this issue to light dealt with an appointment to a local library board, stalemates can occur with other mayoral appointments. Therefore, the bill was drafted to provide a solution as to all mayoral appointments. The bill does contain some Revisor's cleanup that is non-substantive in nature.

Fortunately, such stalemates are usually resolved amicably, but in the rare cases where a dispute arises for which a stalemate persists, H.B. 2648 provides a solution where there is currently a void in the law. I support the House amendments. In addition, as the stalemate in S.E. Kansas continues as of this date, the Committee may want to consider making the law effective on publication in the Kansas Register.

Again, thank you for your attention and consideration of this measure. I will be happy to answer any questions you or the Committee may have.

# GOVERNING BODY HANDBOOK

**Thirteenth Edition  
May 2005**

Prepared and Published by

**League of Kansas Municipalities  
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*Elections and Local  
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Attachment 3*



**Appointment of Officers.** The mayor appoints, by and with the consent of the council, a municipal judge, chief of police, city clerk, and city attorney. The mayor may appoint such other officers as the council may deem necessary. (K.S.A. 14-201 and K.S.A. 15-204) In cities of the third class, the mayor also appoints a city treasurer. (K.S.A. 15-204) Offices not established by statute should be established by an ordinance which prescribes the duties of the office. Officers appointed and confirmed hold their offices for a term of one year **and** until their successors are appointed and qualified. Some cities have, by charter ordinance, provided for longer terms of office—even open-ended terms—for appointive officers. Appointive officers are usually chosen at the first meeting of the new council following the election. Statute requires that mayor-council cities of the third class make appointments at the first council meeting in the month of May. (K.S.A. 15-204) In the event of a vacancy in an appointive office, the mayor appoints a successor until the next regular time for appointment (i.e., May of the next year). Note that an appointment does not become final until consented to by the council.

**No “Temporary” Appointments.** As a general rule, there is no such thing as a temporary appointment. With the exception of the appointment of police officers in certain cities of Johnson County (K.S.A. 19-2646) and certain special deputies in counties with populations in excess of 100,000 (K.S.A. 19-805a), or where an alternative procedure has been established by charter ordinance, there is no provision under state law for so-called temporary appointments that will last until the next meeting of the council. It also is improper for a mayor whose appointee is not approved by the council to “appoint” the person to office after the meeting is over until the next meeting, with subsequent reappointments after each meeting for so long as the council continues to refuse to confirm the appointment. Until an appointment has been consented to by the council the person cannot take the oath of office and cannot commence executing the duties of office.

**Appointment Controversies.** Appointments frequently give rise to conflicts between mayors and councils. For example, if the council refuses to consent to an appointment made by the mayor, and if the mayor refuses to appoint someone else whom the council will confirm, the incumbent stays in office. No solution to this impasse is provided by state law. The statute gives the mayor

the right to make the appointments. If the council does not believe that the person is qualified, or if they believe he or she will not be a good person for the particular office, the council is perfectly right in refusing to consent. On the other hand, if the person is qualified and can fill the office acceptably, the council should not refuse to confirm a new appointment or reappointment just to keep the incumbent in office. The matter is one of common sense and reasonableness.

**Act in Good Faith When Making Appointments.** The Kansas Supreme Court said in *State v. Lander*, 87 Kan. 474, 476 (1912), as regards confirmation by the council, that the spirit of the appointment statutes require “that the council act in good faith upon the appointments made by the mayor and that if their confirmation be withheld it be for some reason sufficient to actuate honest men in the performance of their duty although they are not required to express what such reason is.”

### **Governance Tip**

A smooth-functioning appointment process is as much a function of the relationships between the parties as of adherence to any state law. Remember to use common sense and be reasonable in dealing with others who may oppose you.



# City of Girard, Kansas

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*"A Great Place to Call Home"*

Mike:

February 3, 2008

As mayor of Girard it was my intent to be present at the hearing given the opportunity. The Monday afternoon timing becomes very difficult for me as Monday evening is our city council meeting and the first one with our new city administrator that I worked hard to get hired. With that being said I would like to provide you my thoughts on this issue.

The library board had one member on the board who in my opinion as mayor and as an ex-officio member was demonstrating questionable behavior. I had written a letter to the president of the library board asking the board to address the one member on his behavior. The board member in question then threatened a law suit against me as mayor but that really has little impact on my concern as mayor. What bothered me is the board member then went on to try and secretly tape a board meeting without telling his fellow board members that he was doing this. His additional action of threatening library employees that he was going to sue the library if he did not get documentation that he had not even asked the board for yet seemed inappropriate. At a budget meeting he openly voiced opposition to the remaining board members as a collective position. Now he is entitled to his opinion but to place his personal desires over the position of the board as a whole again seemed inappropriate in a public meeting before another governing body.

When this board member came up for reappointment I made the decision to seek another community member for the mayoral appointment. When presented to the city council three of the council members would not support the appointment nominee. The council did not take exception to the individual; their reasoning was they desired to keep the existing individual in the board position. In the meetings following the April 2007 city council meeting I offered up two additional names for consideration for the appointment and both times the council responded with their desire to retain the current individual. I took one more opportunity to present one name a second time and again the council made it clear they desired to keep the existing individual. One council member did make motions for the appointment but they would always fail for lack of a second.

In looking at this issue a mayoral appointment can be held at bay indefinitely if a council so makes this choice. The league hand book clearly states that a council should approve a mayoral appointment if they find no reason to object to the appointment. It also states that a mayor should select appointments of qualified individuals, which I believe I tried to do. When I questioned council members on one appointment they clearly indicated there was no objection to this individual only it was not the person they wanted. The only way left for a mayor to resolve a stand off like this is to give in to the demands or to seek a mandamus action to force the council to fulfill their elected obligation.

I believe the proposed house bill 2648 is a good compromise to level the playing field of power between a mayor and a city council. This house bill does protect the community in that if a mayor tried to appoint an unqualified individual the council has the ability to stop this process. On the other hand if a mayor is presenting a qualified appointee the council must take reasonable action or explain the reason for their inaction.

Again if the timing of the hearing were earlier in the day or on another day I would have liked the opportunity to speak to this issue.

I can be available by phone if that would assist the discussion process.

Cordially,



Maurice A. Harley, Mayor Girard Kansas

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attachment 4*

5)

HB 2648 APPOINTEES AFFECTED

KLRD February 4, 2008

SECTION	STATUTE	ENTITY	APPOINTEE	NOTES
2	12-1222	City, county, township library boards	Members	Bill also expands alternative board membership option to all cities
3	12-5711	Ft. Scott/Bourbon Co. Riverfront Authority	Gov. Bd. Members	
4	13-518	Clerk's Office	Deputy clerks	Cities of the first class
5	13-527	City attorney, city prosecutor, city clerk, city treasurer, municipal judge of the municipal court, city engineer, director of public works, chief of police, policemen, and such other officers and employees as deemed necessary	See previous column	Cities of the first class
6	13-1347	Board of park commissioners	Members	Cities of the first class
7	14-201	Municipal judge of the municipal court, a city marshal-chief of police, city clerk, city attorney, and may appoint police officers and any other officers deemed necessary	See previous column	Cities of the second class
8	14-695	Board of hospital trustees	Members	Cities of the second class
9	15-201	Council vacancies	See previous column	Cities of the third class
10	15-204	Municipal judge of the municipal court, clerk, treasurer, marshal-chief of police, law enforcement officers and such other officers deemed necessary	See previous column	Cities of the third class
11	17-4757	Urbana renewal agency board of commissioners	Members	

*Elections and Local Government 3-12-08  
Attachment 5*



League of Kansas Municipalities

To: Senate Elections and Local Government  
From: Kimberly Winn, Director of Policy Development & Communications  
Date: March 12, 2008  
Re: Opposition to HB 2648

Thank you for the opportunity to appear on behalf of the members cities of the League of Kansas Municipalities. We offer the following key concerns regarding HB 2648:

- **Major Policy Change.** In its current form, HB 2648 is a wholesale policy change that would affect all appointments for all 627 cities in Kansas. This would include appointments to voluntary boards and commissions as well as the hiring of city clerks, treasurers, police chiefs, etc. It would also apply to the filling of vacancies in elected positions on the city governing body. Simply put, this is a massive change in policy that would affect thousands of positions across the state.
- **Litigation Would Result.** HB 2648 requires that if an individual is not selected to a position, the governing body would have to state by the passage of a resolution a specific finding that the person is "unqualified" or "not fit" to hold the office or position. The law in this area has been well settled for some time. Since *Board of Regents of State Colleges v. Roth* in 1972 (408 U.S. 564), it has been clear that if a public entity violates someone's "liberty interest," the public entity will be held accountable under the federal Constitution. The *Roth* case has been applied to various specific situations a total of 792 times since the original decision was made. Because of this case and the cases which followed, it is always our legal advice to cities that they should never discuss in public the fitness of any employee. To do so would violate the liberty interest of that employee and would subject the city to litigation which the city would most likely lose. HB 2648 actually mandates that a specific finding of fitness be made by the governing body and put into a resolution. This would certainly cause an increase in litigation and significant cost to the taxpayers of Kansas to defend such lawsuits, and in some cases, to pay out moneys in lost cases.
- **Destroys Checks and Balances.** Under the current law for most appointments, the mayor submits a name and the members of the council or commission must either approve or disapprove the mayor's nomination. While a disagreement between the mayor and councilmembers may arise from time to time, those are local disagreements which should be worked out locally between the mayor and council. In effect, HB 2648 would result in a "rubber stamp" of the mayor's appointment. Because of the fear of litigation and the potential embarrassment of passing an actual resolution indicating why an individual is not fit for a particular position, most councils would be forced to simply agree to the mayor's appointment. This flies in the face of the long standing checks and balances system that has been in place in Kansas statutes for many years.

For these reasons, we ask that you do not recommend HB 2648 favorably for passage. I would be happy to stand for questions at the appropriate time.

*Electons and Local  
Government 3-12-08  
Attachment 6*