

MINUTES OF THE HOUSE ELECTIONS COMMITTEE

The meeting was called to order by Chairman Steve Huebert at 3:30 p.m. on March 11, 2009, in Room 446-N of the Capitol.

All members were present except:

Representative Mike Peterson- excused
Representative Tom Sawyer- excused

Committee staff present:

Ken Wilke, Office of the Revisor of Statutes
Martha Dorsey, Kansas Legislative Research Department
Jill Shelley, Kansas Legislative Research Department
Florence Deeter, Committee Assistant

Conferees appearing before the Committee:

Diane Gjerstad, Wichita Public Schools
Eric Sartorius, Overland Park
Dale Goter, Government Relations Manager, City of Wichita
Mike Taylor, Public Relations Director, United Government Public Relations, Wyandotte County
Don Moler, Executive Director, League of Kansas Municipalities
Doug Mays, City of Olathe
Mark Tallman, Assistant Executive Director/Advocacy, Kansas Association of School Boards
Brad Bryant, Deputy Assistant Secretary of State

Others attending:

See attached list.

Hearing On: **SB 71 - Question submitted elections; new reporting requirements.**

Ken Wilke, Office of the Revisor of Statutes, advised the committee of the changes to a statute dealing with local question-submitted elections. He said the Senate committee added language similar to the wording of campaign finance reporting in section two (2). Mr. Wilke explained that the Senate Committee of the Whole added the "new section two" which prohibits officers or employees of a municipality to use public funds for the purpose of advocating a specific outcome of a question-submitted election.

Diane Gjerstad, Wichita Public Schools, addressed the committee representing the position of Wichita Public Schools Board President, Mr. Lynn Rogers (Attachment 1). She indicated that by moving the reporting date of expenditures and receipts from December 31st to a fixed time prior to the election, the schedule could be parallel to legislative campaign reporting. Ms. Gjerstad recommended the committee consider **SB 71** favorable for passage as amended by the Senate committee.

Eric Sartorius, Overland Park, presented testimony in opposition to **SB 71**, stating that the amendment restricts freedom of speech on the political activities of locally elected officials (Attachment 2). He said this bill uses language that creates confusion on the use of public funds by candidates running for public office. Mr. Sartorius recommended removing "new section two" and then report **SB 71** favorable for passage.

Dale Goter, Government Relations Manager, City of Wichita, spoke in opposition to **SB 71**, concurring with statements previously given (Attachment 3). He said the bill as amended contained certain provisions that are not acceptable to the governing body of the City of Wichita.

Mike Taylor, Public Relations Director, United Government Public Relations, Wyandotte County, spoke in opposition to **SB 71**, saying the agency recommended the free-speech restriction be stricken from the bill (Attachment 4).

Don Moler, Executive Director, League of Kansas Municipalities (LKM), said LKM holds the position of opposing the inclusion of "new section two" as unconstitutional and a possible problem for elected and appointed local public officers (Attachment 5).

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Doug Mays, City of Olathe, acknowledged the simplicity of the original version of **SB 71** and holds to the position that the language in the amendment titled "new section two" violates the first amendment rights of citizens of Kansas (Attachment 6). He spoke as an opponent and recommended striking the amendment or killing the entire bill.

Melissa Wangmann, Legislative Service Director, General Counsel, Kansas Association of Counties, submitted written testimony in opposition to **SB 71** (Attachment 7).

Mark Tallman, Assistant Executive Director/Advocacy, Kansas Association of School Boards (KASB), said KASB remains uncommitted in its position on **SB 71** (Attachment 8). He indicated the association's concern for the language contained in the "new section two." He recommended that language be removed or changed for the purpose of clarification of speech rights for persons involved in election campaigns.

The hearing on **SB 71** was closed.

Hearing On: **SB 118 - Campaign finance; state-wide offices; electronic filing required.**

Ken Wilke reported the intent of **SB 118** is to allow candidates throughout the state to file finance reports electronically. He said the bill was recommended by the Kansas Governmental Ethics Commission.

Brad Bryant, Deputy Assistant Secretary of State, stated that **SB 118** coincides with efforts put forth by the Secretary of State's office for electronic filing of campaign finance reports (Attachment 9). He provided background on the legislation passed in 2007, which required the agency to build a system for filing electronically; he said there remained an option for using the system to make reports. He said this bill, if passed, would move toward a more effective use of the electronic system and recommended the bill favorably for passage.

The hearing on **SB 118** was closed.

The Chairman called for working of bills:

SB 171 - Sherman county; election of county commissioners.

Representative Huebert introduced an amendment which would require a dual majority of voters in Sherman County to elect county commissioners (Attachment 10). Representative Schwab moved to accept the amendment. Representative Brunk seconded the motion. The motion to amend was passed.

Representative Schwab made a motion to pass favorably SB 171 as amended. Representative Horst seconded the motion. The motion passed.

SB 80 - Certain cities; sale of utility systems; elections.

Representative Schwab made a motion to amend SB 80 by changing "page 2, line 6" to read, "publication in the register." Representative Horst seconded the motion. The motion to amend was passed.

Representative Brunk made a motion to pass the bill favorably as amended. Representative O'Brien seconded the motion. The motion passed.

The Chairman entertained a motion to delete the language of **SB 3** for the purpose of re-working **HB 2077**. Representative Schwab made a motion to strike all the language of SB 3, and insert HB 2077 including the original amendment. Representative Brunk seconded the motion. Discussion ensued pertaining to the withdrawal of the Sawyer amendment. The committee members voiced concerns regarding the signing of an affidavit to verify identification, and the delaying of the effective date of January 2012. The motion to amend was passed by a vote of 7-2. Representatives Garcia and Menghini voted against the amendment.

Representative Garcia made a motion to insert the Sawyer amendment. Representative Menghini seconded

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the motion. The motion failed.

Representative Schwab made a motion to recommend SB 3 (with the language of HB 2077) as House Substitute for SB 3 to be considered as favorable for passage as amended. Representative Brunk seconded the motion. The motion passed 7-2. Representatives Garcia and Menghini are recorded as voting no.

The meeting was adjourned at 5:00 p.m. The next meeting is scheduled for March 16, 2009.



House Elections
Representative Huebert, Chair
S. B. 71 – Campaign Disclosure

*Presented by Diane Gjerstad
on behalf of Mr. Lynn Rogers*

March 11, 2009

Mr. Chair, members of the Committee:

Today I am presenting testimony for Wichita Public Schools Board President Lynn Rogers, who is unable to attend work obligations. As you know, school board members in Kansas are not paid, so keeping ones 'paying' job is quite important! Mr. Rogers would like to stress that he feels S. B. 71 is an important topic for discussion.

S. B. 71 would require campaign committees promoting or opposing ballot questions (such as school bond elections) report expenditures and receipts on a schedule parallel with legislative campaign reporting.

Under current law, Wichita's recent school bond election was held on November 4th but reports showing who supported or opposed the issue were not required until December 31st.

Mr. Rogers believes it is important for everyone to know who advocates one way or the other – just as your legislative campaign had to report and just as school board candidates must disclose finances and contributors. S.B. 71 would level the playing field and require the same reporting for ballot questions by simply moving the reporting date from December 31st to a fixed time prior to the election.

He opposes the floor amendments which would put a stifling effect on public officials and public employees. The floor amendment ignores a number of Attorney General Opinions which stress it is the public entity's duty to educate the public about referendum elections.

We urge the committee to reject the Senate floor amendment and pass this bill out as amended by the Senate committee.

Lynn Rogers extends his thanks to you, Mr. Chairman, for this hearing and would urge the committee's favorable consideration of S. B. 71 as amended by the Senate committee.

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Attachment #1*

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Testimony before the House Elections Committee
Regarding Senate Bill 71
By Erik Sartorius

March 11, 2009

The City of Overland Park appreciates the opportunity to appear before the committee and present testimony in opposition to Senate Bill 71. Specifically, the City opposes New Section 2 of the bill, which was added as an amendment on the Senate floor. This language, at best, punitively limits the participation of municipal governing body members in elections, and at worst unconstitutionally limits their First Amendment rights.

Under the amended bill, no officer or employee of a municipality could use any public funds, assets, or time to advocate for or against any candidate or ballot question. Taking this further, however, the amendment prohibits elected members of a municipality's governing body from using their time to campaign for or against a ballot question (except for their own elections).

Applying such a limit to elected officials raises more questions than it answers, not the least of which is, "Is limiting the speech of these officials constitutional?" Among other questions raised:

- When, exactly, is an elected official considered "off duty," and thus not acting in the capacity of an elected official? Few members of governing bodies have set, specific periods of time for when they are compensated, making such a determination difficult, if not impossible.
- If elected officials do not receive any pay, but receive some type of allowance or benefit, does that qualify as compensation?
- Would the Governing Body of a City in Johnson County, by passing a resolution in support of the passage of a bond issue for Johnson County Community College, violate the proposed law?
- What if a governing body member is replying to a direct question from a constituent as to that member's position on a particular ballot issue?

These are but a very few of the questions that quickly become apparent should a municipality attempt to apply this overly broad language. The basic problem with this bill is that it mixes up and confuses certain behavior that should be prohibited with other behavior that should not be prohibited. For instance, city funds should not be spent to oppose a candidate for public office. Conversely, an elected official should not be

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prohibited from taking a stand on an issue of concern to that official's constituents, such as a bond issue.

Because of Free Speech concerns, and the confusion the amended language causes, the City of Overland Park opposes this language. Again, the City appreciates the opportunity to offer testimony before this committee. We respectfully ask that you remove New Section 2 from the bill if you choose to report Senate Bill 71 favorably for passage.



Dale Goter
Government Relations Manager

TESTIMONY

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City of Wichita Testimony on SB71 Election Reporting Requirements House Elections Committee March 11, 2009

Senate Bill 71 as amended contains certain provisions that are unacceptable to the governing body of the City of Wichita.

As introduced, the bill provides a number of positive improvements to current campaign finance reporting laws. However, the floor amendment in New Section 2 would impose an unreasonable restriction on the political activities of locally elected officials.

The requirement that "No officer or employee of any municipality or member of the governing body thereof shall use ... the time of any officer or employee ... to expressly advocate the nomination, election or defeat of a clearly identified candidate to state office or local office" would deprive local officials of their longstanding right to engage in such political activity.

It is unclear as to what particular problem this amendment sought to address, but the collateral damage to the constitutional rights of local officials cannot be ignored.

The City of Wichita urges the committee to strip this unacceptable provision from the bill before advancing it for further consideration.

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Testimony

Unified Government Public Relations
701 N. 7th Street, Room 620
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Mike Taylor, Public Relations Director
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Senate Bill 71 Local Elections and Role of Locally Elected Officials

Delivered March 11, 2009
House Elections Committee

The Unified Government opposes Senate Bill 71 as amended by the Saenate Committee of the Whole. The bill as now written prohibits locally elected officials- from Mayors and City Council members -to- County Commissioners and School Board Members from taking public positions on public issues affecting their communities.

To prohibit elected officials from commenting on important community issues is a violation of the First Amendment rights of free speech guaranteed in the United States Constitution. When a citizen chooses to serve their community as a public servant, they do not give up the same rights citizens who are not elected still hold. In fact, the expectation is that as an elected official, they would speak out more.

If the Legislature wants to continue down this path, it would be the height of hypocrisy to not apply the same unconstitutional restriction on itself. Elected legislators should have no more right to take public positions on candidates, campaigns or other important issues than locally elected officials. You are all elected by the same citizens and spend the same tax dollars in the process of doing the public jobs you all hold.

Senate Bill 71 as now written is unreasonable and absurd. The Unified Government urges the committee to strip the free speech restrictions from the bill.

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League of Kansas Municipalities

To: House Elections Committee
From: Don Moler, Executive Director
Re: Concerns about SB 71
Date: March 11, 2009

First I would like to thank the Committee for allowing the League to appear today to comment on SB 71. While we have no real problem with the underlying bill, we are appearing today to oppose the inclusion of New Section 2, which we understand was added on the floor of the Senate without vetting in committee. This New Section 2 contains language which we believe may well be unconstitutional, and will constitute a problem for elected and appointed local public officers.

In a nutshell, while the underlying attempt to regulate and prohibit the use of public funds or publicly owned vehicles, machinery, equipment, or supplies to influence an election or support or oppose a proposition is a good one, we believe that the language can be read to preclude freedom of political speech by elected and appointed local officers. As a result of this conclusion, we are respectfully asking the committee to delete New Section 2 as it will almost inevitably create more problems than it solves. I will be happy to answer any questions the committee may have about the League's position on SB 71.



Senate Bill 71
Testimony of the City of Olathe
by Doug Mays

March 11, 2009

Senate Bill 71 began as a simple bill, but with floor amendments added it is now a very complicated and dangerous. Specifically, language was added that, if adopted, would criminalize virtually any political speech or advocacy by employees and members of governing bodies of Kansas municipalities.

The troubling language is contained in New Section 2.

[New Sec. 2. (a) ... the time of any officer or employee of any such municipality or member of the governing body thereof, for which the officer or employee or member of the governing body thereof is compensated by such municipality to:

[(1) expressly advocate the nomination, election or defeat of a clearly identified candidate to state office or local office. The provisions of this section prohibiting the use of time of any officer or employee for such purposes shall not apply to an incumbent officer campaigning for nomination or reelection to a succeeding term to such office or to members of the personal staff of any elected officer; or

[(2) promote or engage in promoting the success or defeat of the adoption or defeat of any question submitted at any city, unified school district, community college, township, county or state election.

[(b) For the purposes of this subsection, the terms "governing body" and "municipality" shall have the meaning ascribed to it in K.S.A. 12-105a and amendments thereto.

As defined in New Section 2 (b), the following would fall under the authority of the amended bill:

"Municipality" means and includes county, township, city, school district of whatever name or nature, community junior college, municipal university, city, county or district hospital, drainage district, cemetery district, fire district, and other political subdivision or taxing unit, and including their boards, bureaus, commissions, committees and other agencies, such as, but not limited to, library board, park board, recreation commission, hospital board of trustees having power to create indebtedness and make payment of the same independently of the parent unit.

"Governing body" means and includes the board of county commissioners, the governing body of a city, the township board (trustee, clerk and treasurer), board of education or

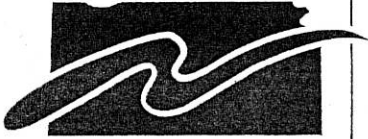
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other governing body of a school district, board of trustees of a community junior college, board of regents of a municipal university, the body of a special district (such as a drainage, cemetery, fire or other) which has the power to create indebtedness and is charged with the duty of paying the same, and the board, bureau, commission, committee or other body of an independent agency of a parent unit.

Many municipal employees and virtually all members of governing bodies are not paid by the hour. Rather, they are salaried and, as such, could be considered on duty 24/7. At the very least, it would be nearly impossible for these individuals to prove they were not "on the clock" at any given time.

Senate Bill 71 may have been well meaning in its original version. But, as it presently stands, it would be a flagrant violation of thousands of Kansans' first amendment rights that would lead to needless prosecution, litigation, and discouragement of qualified individuals to serve in elected and appointed positions within their communities.

The City of Olathe urges you to strike most or all of the Senate floor amendment, or kill SB 71 in its entirety.



KANSAS
ASSOCIATION OF
COUNTIES

WRITTEN TESTIMONY OF THE KANSAS ASSOCIATION OF
COUNTIES
TO THE HOUSE ELECTIONS COMMITTEE
ON SB 71
Wednesday, March 11, 2009

Chairman Huebert and members of the Committee:

Thank you for the opportunity to submit written testimony in opposition to SB 71, which governs certain elections.

The Kansas Association of Counties believes that new section 2 in the proposed bill is unconstitutionally vague. This section bars the ability of municipality officers, employees and governing board members to promote or dissent about a candidate, issue in an election, or vote. The KAC's concern lies in ambiguity of the phrase "for which the officer or employee or member of the governing body thereof is compensated by such municipality." The Kansas Supreme Court has stated a statute is unambiguous when the intent of the legislature can be ascertained and a court need not speculate in order to determine that intent. *See Williamson v. City of Hays*, 275 Kan. 300, 64 P.3d 364 (Kan. 2003). The intent of the legislature cannot be determined as currently written. This statute is unclear and ambiguous as to when an officer or board member is considered "compensated."

Accordingly, we would ask the committee to reject SB 71.

The Kansas Association of Counties, an instrumentality of member counties under K.S.A. 19-2690, provides legislative representation, educational and technical services and a wide range of informational services to its member counties. Inquiries concerning this testimony should be directed to Randall Allen or Melissa Wangemann by calling (785) 272-2585.

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KANSAS
ASSOCIATION



OF
SCHOOL
BOARDS

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Testimony before the
House Elections Committee

on
SB 71

by

Mark Tallman, Assistant Executive Director/Advocacy
Kansas Association of School Boards

March 11, 2009

Mr. Chairman, Members of the Committee:

KASB has not adopted a position on the original version of **SB 71**, which is now Section 1, amending the reporting requirements for question submitted elections. However, we do wish to raise some concerns about Section 2, which prohibits the use of public resources to influence candidate and question submitted elections.

KASB has consistently taken the position that well-established case law already prohibits school districts from using their resources to promote either candidates or question elections such as school bonds. As a result, we do not feel that Section 2 is necessary, but we would not object to the concept of this section in principle. However, we are concerned that the language in Section 2 may go too far in prohibiting the use of “the *time* of any officer or employee of any such municipality or member of the governing body thereof, for which the officer or employee or member of the governing body thereof is compensated by such municipality.” (Please note school board members are *not* compensated.)

Our question is: how can we define the “time” of salaried employees? When is a school employee “off the clock,” particularly school administrators? We would note that the bill does attempt to prohibit state officials, for example, legislators, from election advocacy “on their own time.” Therefore, it seems inconsistent to pass legislation which might be construed to limit the free speech rights of local government officers and employees in election campaigns.

We would suggest that Section 2 of the bill either be removed or amended to clarify its effect on individuals. Thank you for your consideration.

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RON THORNBURGH
Secretary of State



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STATE OF KANSAS

House Committee on Elections

Testimony on Senate Bill 118

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

March 11, 2009

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to testify in support of Senate Bill 118. Although not proposed by the Secretary of State's office, this bill fits with our recent efforts and our goals for electronic filing of campaign finance reports. Senate Bill 118 would require candidates for offices elected on a statewide basis to file their regular campaign finance reports electronically.

We support this legislation because it will reduce the amount of paper handled by our office and the amount of staff time consumed in managing paper reports. Also, it will eliminate the need to make photocopies of these reports for the Governmental Ethics Commission.

In 2007, Senate Bill 100 was passed as part of the conference committee report on House Bill 2081. This legislation required the Secretary of State to build an electronic campaign finance reporting system, which was subsequently accomplished in a cooperative effort with the Governmental Ethics Commission. However, the law did not require anyone to file their reports electronically. It was an optional system. We believe that because we have an operational electronic system, we should encourage its use. Senate Bill 118 does that.

This effort fits with another bill proposed by the Secretary of State this year. Senate Bill 57 (which was amended into Senate Bill 55) would require last-minute campaign finance reports during the eleven-day "blackout" period before each election to be filed by fax or electronically. Senate Bill 57 coupled with Senate Bill 118 represent a move toward more effective use of the electronic system.

We urge the committee to report Senate Bill 118 favorably for passage. Thank you for your consideration.

1 missioners being elected. The candidate receiving the highest number of
2 votes for each office of county commissioner being elected shall be
3 deemed to have been elected to such office.

(1) 4 (c) The provisions of this section shall expire on December 31, 2010,
5 unless the qualified voters of Sherman county, Kansas, elect to adopt the
6 provisions of this section prior to such date.

7 Sec. 2. K.S.A. 19-201 is hereby amended to read as follows: 19-201.
8 *Except as provided in section 1, and amendments thereto*, each county in
9 the state of Kansas shall have three (3), five (5) or seven (7) commissioner
10 districts, which shall be designated numerically and serially beginning
11 with number 1.

12 The provisions of this section may be modified by the adoption of a
13 charter for county government in any county which has established a
14 charter commission pursuant to law.

15 Sec. 3. K.S.A. 19-202 is hereby amended to read as follows: 19-202.
16 (a) The board of county commissioners of each county shall consist of
17 three, five or seven qualified electors.

18 (b) *Except as provided in section 1, and amendments thereto*, one
19 county commissioner shall reside in and represent each commissioner
20 district within the county. During the time that any person is a candidate
21 for nomination or election to office as a member of the board of county
22 commissioners and during the term of office of the county commissioner,
23 such candidate or county commissioner shall be and remain a qualified
24 elector who resides in such person's district.

25 (c) *Except as provided by K.S.A. 19-203, and amendments thereto*,
26 terms of office for the board of county commissioners shall be staggered
27 in such a way that no more than a simple majority of commissioners is
28 elected at any general election.

29 (d) *Except as provided by K.S.A. 19-203, and amendments thereto*,
30 all county commissioners shall hold office for a term of four years from
31 the second Monday of January next after their election and until their
32 successors are qualified.

33 (e) The provisions of subsections (a), (c) and (d) of this section may
34 be modified by the adoption of a charter for county government in any
35 county which has established a charter commission pursuant to law.

36 Sec. 4. K.S.A. 19-203 is hereby amended to read as follows: 19-203.

37 (a) *Subject to the provisions of section 1, and amendments thereto*, when
38 a vacancy occurs in the office of a member of the board of county com-
39 missioners, it shall be filled by appointment of a resident in the district
40 to fill the office for the unexpired term and until a successor is elected
41 and qualified. When a vacancy occurs before May 1 of the first even-
42 numbered year following the commencement of a term of office, it shall
43 be filled by the appointment of a resident of such district who shall serve

(2) If a majority of the qualified electors voting on the
resolution submitted to the voters pursuant to this section
who reside within the corporate limits of the city of
Goodland, Kansas, and a majority of the qualified electors
voting on such resolution who reside outside of the corporate
limits of the city of Goodland , Kansas, vote in favor thereof,
the resolution shall be implemented in the manner provided
by the resolution. If a majority of the electors who reside
within the corporate limits of the city of Goodland , Kansas
or a majority of the qualified electors who reside outside of
the corporate limits of the city of Goodland , Kansas vote
against such resolution, the proposed resolution shall not be
implemented.

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