

MINUTES OF THE HOUSE ELECTIONS COMMITTEE

The meeting was called to order by Chairman Steve Huebert at 3:30 p.m. on March 18, 2009, in Room 446-N of the Capitol.

All members were present except:

Representative Mike Peterson- excused
Representative Scott Schwab- 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

Others attending:

See attached list.

The Chairman noted that distribution of requested information was provided by Carol Williams from the Governmental Ethics Commission (Attachment 1).

The Chairman called for consideration and discussion of **SB 55 - Concerning ballots by uniformed and overseas citizens and federal services voters.**

Ken Wilke, Office of the Revisor of Statutes, reviewed **SB 55** for the members, saying the bill allows military personnel to receive ballots which include voting for local questions, state constitutional amendments, and party precinct committee positions. He said included in the bill is a change in the method of transporting campaign finance reports.

As a point of privilege, the Chairman requested returning the bill to the original language and eliminating all language inserted after Section 1. Representative Brunk made a motion to return SB 55 to the original language. Representative Horst seconded the motion. The motion passed. Representative Brunk made a motion to report SB 55 with the original language favorably for passage. Representative O'Brien seconded the motion. The motion passed.

The Chairman called for consideration and discussion of **SB 56 - Elections; security of advance voting ballots.**

Ken Wilke said the bill primarily addresses advanced voting ballots and the original design was to provide security for transmitting the ballot by a person designated in writing. An amendment indicating the voter must sign and date the time when the ballot was taken for transit was inserted on page 3, lines 9 and 10. He said an additional amendment was added by the Senate committee of the whole, outlining procedures in the event of a violation.

Representative Brunk made a motion to report SB 56 favorably for passage. Representative Otto seconded the motion. Following committee discussion, Representative Sawyer made a substitute motion to amend the bill striking sections 1, 2 and 3 and replacing it with the contents of New Section Two described in the balloon Sub for SB 117. Representative Menghini seconded the motion. The Chairman called for a show of hands to record the vote, 5 - 4. The substitute motion passed. Representative Sawyer made a motion to report Sub for SB 56 favorably for passage as amended. Representative Garcia seconded the motion. The motion passed.

The Chairman called for consideration and discussion of **SB 103 - Elections; certain local units of government; primaries.**

Ken Wilke said the language of **SB 103** would delete the previous requirements regarding the number of persons allowed on the general election ballot. Reinsertion of prior language with regard to election on a school board or community college board and the elimination of a primary election under certain circumstances is included in the bill.

CONTINUATION SHEET

Minutes of the House Elections Committee at 3:30 p.m. on March 18, 2009, in Room 446-N of the Capitol.

Representative Sawyer made a motion to report **SB 103** favorably for passage. Representative Menghini seconded the motion. By show of hands the motion failed., 4 - 5.

Representative Otto made a motion to re-consider action on **SB 56**. Representative Brunk seconded the motion. By show of hands, the motion to re-consider passed, 5 - 4. Representative Sawyer moved to renew his motion to pass **SB 56** as amended as **Sub for SB 56**. Representative Menghini seconded the motion. By show of hands the motion failed, 4 - 5.

Representative Sawyer made a motion to adopt the original amendment of **SB 56**. Representative Bethell seconded the motion. By show of hands the motion failed, 2 - 5. Representative Brunk made a motion to report **SB 56** favorably for passage. The motion passed. Representative Sawyer requested his No vote be recorded.

Representative Brunk expressed appreciation for the participation of the Ranking Minority.

The meeting was adjourned at 4:30 p.m. There are no additional meetings scheduled for the 2009 Legislative Session.

HOUSE ELECTIONS COMMITTEE

GUEST LIST

DATE: March 18, 2009

NAME	REPRESENTING
Brad Bryant	Sec. of State
Kari Presley	Kearney & Associates
ERIK SARTORIUS	City of OVERLAND PARK
Nathan Eberline	LKM
Benjamin Miller-Loren	Sawyer



GOVERNMENTAL ETHICS COMMISSION
www.kansas.gov/ethics

Memorandum

TO: Elections Committee Chairman Huebert
FROM: Carol Williams
DATE: March 18, 2009
RE: Materials Sent to Candidates and Their Treasurers

Attached you will find some of the material we send to all state and local candidates as well as their treasurers. Each of these pieces mention the "paid for" or attribution statement which must be included on ads, mailings, e-mails and websites which expressly advocate the election or defeat of a clearly identified candidate.

House Elections
3-18-09
Attachment # 1

**GOVERNMENTAL ETHICS COMMISSION**www.kansas.gov/ethics

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

Governmental Ethics Commission

Permanent Administrative
Regulations

Article 20.—CAMPAIGN FINANCE ACT;
GENERAL PROVISIONS

19-20-4. Disclosures required on political advertising. (a) Each disclosure required pursuant to K.S.A. 25-4156(b)(1)(A)-(C) and amendments thereto shall appear at the bottom of the advertisement or item and shall contain both the name of the chairperson, treasurer, or other responsible party and the name of the organization that the responsible party represents. With regard to the required disclosure, the following requirements shall apply:

(1) The name of the organization alone shall not be sufficient.

(2) If a political committee is responsible for the advertisement or item, the chairperson's name and the name of the political committee shall be disclosed.

(3) If a candidate or candidate committee is responsible for the advertisement or item, the treasurer's name and the name of the candidate or candidate committee shall be disclosed.

(4) If an organization that has a chairperson, other than a political committee, candidate, or candidate committee, is responsible for the advertisement or item, the chairperson's name and the name of the responsible organization shall be disclosed.

(5) If an organization that does not have a chairperson, other than a political committee, candidate, or candidate committee, is responsible for the advertisement or item, then the responsible individual listed shall be one of the following:

(A) The individual who is the primary funding source;

(B) if no individual is the primary funding source, the individual who controlled the decision to place the advertisement or produce the item; or

(C) if no one individual controlled the decision, the individual who controlled the funds.

(6) If an individual is responsible for the item, that individual's name shall be disclosed, unless the advertisement or item is a brochure, flier, or other political fact sheet and the individual makes expenditures in an aggregate amount of less than \$2,500 within a calendar year.

(7) The following disclosures shall be considered adequate when placed at the bottom of the advertisement or item:

(A) Paid for by the (name of candidate) campaign, (name of treasurer), treasurer;

(B) paid for by (name of candidate) for (title of office sought), (name of treasurer), treasurer;

(C) sponsored by the committee to elect (name of candidate), (name of chairperson), chairperson;

(D) paid for by (name of political action committee) political action committee, (name of treasurer), treasurer; and

(E) advertisement: paid for by committee to elect (name of candidate), (name of chairperson), chairperson.

(b) The phrase "brochure, flier or other political fact sheet," as used in K.S.A. 25-4156 and amendments thereto, shall include the following if the items "expressly advocate the nomination, election or defeat of a clearly identified candidate," as defined by K.S.A. 25-4143 and amendments thereto:

(1) Business cards;

(2) door hangers;

(3) windshield fliers;

(4) postcards;

(5) fund-raiser invitations;

(6) traditional brochures, fliers, or mailers; and

(7) web sites, e-mails, or other types of internet communications. NEW

(c) The phrase "brochure, flier or other political fact sheet" shall not include any of the following:

(1) Yard signs;

(2) billboards;

(3) bumper stickers;

(4) envelopes;

(5) t-shirts;

(6) pens, pencils, rulers, magnets, or other trinket items;

or

(7) fund-raiser invitations, business cards, brochures, or fliers if these items do not expressly advocate the nomination, election or defeat of a clearly identified candidate.

(d) A postal or internet address that contains words that expressly advocate the nomination, election or defeat of a clearly identified candidate shall be considered political advertising if that address is published. Published matter containing an address that constitutes political advertising shall require a disclosure pursuant to K.S.A. 25-4156 and amendments thereto. (Authorized by K.S.A. 2007 Supp. 25-4119a; implementing K.S.A. 2007 Supp. 25-4156; effective Jan. 23, 2004; amended July 18, 2008.) NEW

Highlights of the Campaign Finance Act for Candidates



Things to Remember

- Never deposit campaign funds into your personal bank accounts.
- Obtain and record the name and address of each contributor.
- Obtain the occupation and industry of any individual contributor giving more than \$150.
- Keep track of all funds you and your spouse spend personally. These are in-kind contributions and must be reported on Schedule B of a Receipts & Expenditures Report. Exception – your travel, lodging and meals are not in-kind contributions.
- Political advertisements placed in newspapers must have the word “advertisement” or “adv.” followed by your name and that of your chairperson or treasurer. Radio and TV political ads must state “paid for” or “sponsored by”, together with your name and that of your chairperson or treasurer. Political brochures, flyers, fact sheets, push cards, door hangers, postcards, fund raising invitations, etc. which advocate the election or defeat of a candidate for state or local office must state “paid for” or “sponsored by”, together with your name and that of your chairperson or treasurer. Any telephonic message which expressly advocates the election or defeat of your campaign must be preceded by a statement which states “Paid for” or “Sponsored by”, together with the name of the responsible party. The campaign **is not** required to place the “paid for by” on any yard signs, billboards, bumper stickers, envelopes, pens, pencils, rulers, magnets, t-shirts or other such trinkets.



Prohibited Contributions

Certain contributions are prohibited by Kansas law. A candidate's campaign may not accept the following types of contributions:

- Anonymous contributions of more than \$10.
- Contributions in cash of more than \$100.
- Contributions in excess of the limits set by law (see contribution limitations chart).
- Contributions given in the name of someone other than the contributor (these are laundered contributions).
- Contributions from the campaign funds of another candidate.

This is a highlight of some of the provisions of the Campaign Finance Act. Please refer to the Act and the Candidate Handbook, call the Governmental Ethics Commission's office (785-296-4219), or view the website www.kansas.gov/ethics for complete information.

Highlights of the Campaign Finance Act for Treasurers



Things to Remember

- Never deposit campaign funds into the personal bank accounts of yourself or the candidate.
 - Obtain and record the name and address of each contributor.
 - Obtain the occupation and industry of any individual contributor giving more than \$150.
 - Keep track of all funds the candidate and spouse spend personally. These are in-kind contributions and must be reported on Schedule B of the Receipts & Expenditures Report. Exception – candidate travel, meals and lodging are not in-kind contributions.
- Political advertisements placed in newspapers must have the word “advertisement” or “adv.” followed by the candidate’s name and that of the chairperson or treasurer. Radio and TV political ads must state “paid for” or “sponsored by”, together with the candidate’s name and that of the chairperson or treasurer. Political brochures, flyers, fact sheets, push cards, door hangers, postcards, fund raising invitations, etc. which advocate the election or defeat of a candidate for state or local office must state “paid for” or “sponsored by”, together with the candidate’s name and that of the chairperson or treasurer. Any telephonic message which expressly advocates the election or defeat of the candidate must be preceded by a statement which states “Paid for” or “Sponsored by”, together with the name of the responsible party. The campaign **is not** required to place the “paid for by” on any yard signs, billboards, bumper stickers, envelopes, pens, pencils, rulers, magnets, t-shirts or other such trinkets.



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