

MINUTES OF THE HOUSE ELECTIONS COMMITTEE

The meeting was called to order by Chairman Steve Huebert at 3:30 p.m. on January 20, 2010, in Room 144-S of the Capitol.

All members were present except:

- Representative Bob Bethell- excused
- Representative Delia Garcia- excused
- 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

Conferees appearing before the Committee:

- James Meier, School of Pharmacy, Kansas University

Others attending:

- See attached list.

Chairman Huebert opened the meeting welcoming members and introducing Ranking Minority Leader, Representative Melany Barnes. He outlined the intent of the meeting to include a summary report of bills previously heard in this committee during the 2009 legislative session.

Legislative staff, Martha Dorsey provided information regarding the current status of bills in conference. Her detailed report included script analysis taken from Vote Tracker. She noted, and correction was made to insert Representative Milack Talia's name in place of Representative Don Hill in conjunction with the listing of **HB 2256** (Attachment 1).

James Meier, a student at Kansas University, expressed his concerns regarding the Kansas Governmental Ethics Commission's lack of transparency in the public domain. He indicated the lack of a policy for accountability within the Commission prohibits anyone from obtaining information under the open records requests (Attachment 2). He requested the committee consider this issue of concern.

The next meeting is scheduled for January 27, 2010.

The meeting was adjourned at 04:15 p.m.

HOUSE ELECTIONS COMMITTEE

GUEST LIST

DATE: January 20, 2010

NAME	REPRESENTING
Kendra Hanson	Hein Law Firm
Sherie A. Rebel	Allen County Clerk
Jennifer Light	Intern For Rep Hoest

Elections/Ethics Conference '09

Status – End of 2009 Session

Bills in Elections Conference

		Current Status
HB 2158	Kansas highway patrol; elective and appointed offices allowed 2 nd CC appointed; same members: <Huebert, Schwab, Sawyer>---<V. Schmidt, Apple, Faust-Gouddeau> <u>Issues/Bills Contained:</u> <u>HB 2158</u> - KHP (see above). <u>SB 117</u> - corrupt political advertising - limit restriction on Internet communications to those made by candidates, candidate committees, party committees, and political committees. <u>SB 118</u> - e-filing of campaign finance reports for statewide candidates. <u>SB 171</u> - Sherman Co. Bd. of Co. Commissioners' at-large election option. <u>SB 297</u> - temporary alternative to currently required SSI for certain faculty (expires 7/1/2010).	Approved by Gov.
SB 80	Sale or relinquishment of certain public utilities <V. Schmidt, Apple, Faust-Gouddeau>---<Huebert, Schwab, Sawyer>	Conference CONCUR - Gov. Approved
SB 171	Sherman Co. Bd. Co. Commissioners at-large election 3 rd CC appointed; same members: <V. Schmidt, Apple, Faust-Gouddeau>---<Huebert, Schwab, Sawyer> <u>Issues/Bills Contained:</u> <u>SB 55</u> - expansion of ballot forms for federal services voters living overseas. <u>SB 56</u> - transmission of a voter's advance ballot. <u>SB 79</u> - moving the filing deadline for certain candidates to two weeks (further revised by CC to nine days). <u>SB 268</u> - allowing certain federal services voters to apply for registration and an absentee ballot and return the ballot by electronic mail.	<u>VETOED</u> by Gov.

Elections Bills in Other Conference

SB 168	NOW: State agencies' salaries/wages; payment of payroll obligations (<i>ORIG</i> : SOS "registered certification authority" - digital signatures) <V. Schmidt, Apple, Kelly>---<Watkins, Kelley, Burroughs>	Approved by Gov.
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Bill Number and Sponsor	Bill Subject	Current Status	Last Action
H Sub for SB 3 Anthony Hensley, D-19th	Elections	In House Elections	03/30/2009 - House: Withdrawn from Calendar; rereferred to Elections 03/13/2009 - House: Committee Report: Substitute be passed by Elections 02/05/2009 - House: Referred to Elections

Client Notes:

ORIGINAL/SENATE: Dealt with Confirmation Oversight Committee.
 HOUSE: Photo ID (HB 2077 as intro'd. w/ 1 clarifying change). Withdrawn from House Calendar; rereferred to Elections Committee.

SB 55 Senate Ways and Means Committee	Elections; pertaining to official federal services absentee ballots	In House Elections	03/30/2009 - House: Withdrawn from Calendar; rereferred to Elections 03/19/2009 - House: Committee Report: Be passed as amended by Elections 02/25/2009 - House: Scheduled Hearing: Wednesday, 3/4/2009, 3:30 PM, Rm 446-N
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Client Notes:

Would expand the ballot forms for absentee voters living overseas who are called federal service voters under the federal Uniformed Overseas Citizens Absentee Voting Act. Current law excludes overseas absentee ballots from including local questions, state const. amendments, and pol. party prct. comm. positions. Bill would eliminate exclusions and clarify the ballot must include all officers and any proposition for which voter otherwise would be entitled to vote.
 SENATE: Added SB 57 (fax/electronic last- minute cpgn. reports); cpgn. finance transfer added/removed.
 HOUSE: Returned bill to original state.
 CONFERENCE: Placed in SB 171, which was vetoed.

SB 56 Senate Ways and Means Committee	Elections; pertaining to advance voting ballots	In House Elections	03/30/2009 - House: Withdrawn from Calendar; rereferred to Elections 03/19/2009 - House: Committee Report: Be passed by Elections 02/25/2009 - House: Scheduled Hearing: Monday, 3/2/2009, 3:30 PM, Rm 446-N
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Client Notes:

Advance ballot written designation/delivery;changes related to the security of advance voting ballots. The bill would allow another person to transmit a voter's advance ballot only if the voter made the designation in writing, both signed and dated, on the ballot envelope. Current law states another person may transmit the advance ballot upon request of the voter. The bill also would prohibit, expressly, any person other than the voter to sign an application for an advance voting ballot, except as otherwise provided by law. Finally, the bill would restrict the ways in which an advance ballot may be returned to the county election office.
 SENATE: require delivery designation info. on ballot envelope; specify ballot delivery violation would only occur if evidence exists violation was done knowingly and willfully.
 CONFERENCE: Placed in SB 171, which was vetoed.

SB 71 Senate Education Committee	Certain elections	In House Elections	03/04/2009 - House: Scheduled Hearing: Wednesday, 3/11/2009, 3:30 PM, Rm 446-N 02/16/2009 - House: Referred to Elections 02/13/2009 - House: Received and introduced
Client Notes:			
(1) Require the filing of detailed statements of receipts and expenditures by various entities that are designed to or actually do promote the adoption or defeat of any question submitted in a number of local elections; (2) prohibit any officer, employee or governing body member of any municipality to use or authorize the use of the municipality's public resources in specified election campaigning. SENATE: added reporting requirement for 11-day "blackout" period; added prohibition against using public resources for election campaigning.			
SB 79 Senate Ethics and Elections Committee	Elections; pertaining to filing deadlines for candidates	In House Elections	02/20/2009 - House: Referred to Elections 02/19/2009 - Senate: Final Action: Passed as amended; Yeas 34, Nays 6 02/19/2009 - House: Received and introduced
Client Notes:			
Would move the filing deadline up two weeks for candidates for national, state, county and township offices. SENATE: substitute bill to reduce the filing deadline change from one month to two weeks. CONFERENCE: Revised to 9 days and placed in SB 171, which was vetoed.			
SB 103 Senate Ethics and Elections Committee	Elections; relating to certain primary elections	In House Elections	03/04/2009 - House: Scheduled Hearing: Monday, 3/9/2009, 3:30 PM, Rm 446-N 02/20/2009 - House: Referred to Elections 02/19/2009 - House: Received and introduced
Client Notes:			
Would return to prior (2007) law the statutes prescribing when primary elections are held in school districts, cities and community college districts. NO AMENDMENTS.			
Sub for SB 117 Senate Ethics and Elections Committee	Campaign finance; dealing with the crime of corrupt political advertising	In House Elections	03/11/2009 - House: Scheduled Hearing: Monday, 3/16/2009, 3:30 PM, Rm 446-N 02/20/2009 - House: Referred to Elections 02/19/2009 - House: Received and introduced
Client Notes:			
Additions to statute re: the crime of corrupt political advertising of a state or local office: (1) add website, e-mail or other Internet communications, disseminated to 25 or more people, to list of publications that must list who paid for/sponsored them; (2) require vendors/others who provide services listed in corrupt pol. adv. statute to maintain for 1 year a record of purchaser or requestor. SENATE: Sub. bill with revised version of #1; added #2.			

CONFERENCE: Placed in HB 2158, which was approved by Gov.

SB 268 Senate Federal and State Affairs Committee	Elections	In House Elections	03/25/2009 - House: Referred to Elections 03/24/2009 - House: Received and introduced 03/23/2009 - Senate: Committee of the Whole: Be passed; Emergencied to Final Action: Passed; Yeas 40, Nays 0
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Client Notes:

Would allow certain federal services voters (i.e., those residing outside the United States or those who are members of the United States armed forces or a spouse or dependent of a member of the armed forces and a qualified elector who cannot vote timely by mail) to apply for registration and an absentee ballot and return the ballot by electronic mail.
 NO AMENDMENTS IN SENATE

CONFERENCE: Placed in SB 171, which was vetoed.

SB 297 Senate Ways and Means Committee	Governmental ethics; eliminating the filing requirement for certain faculty of state education institutions; pertaining to reporting of certain expenditures by lobbyists; requiring certain members of the judicial branch to file disclosure statements	In House Elections	03/23/2009 - House: Referred to Elections 03/20/2009 - House: Received and introduced 03/19/2009 - Senate: Final Action: Passed as amended; Yeas 39, Nays 0
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Client Notes:

(1) Statements of substantial interest (SSI) - (a) delete requirement for those filed with KGEC by certain faculty members and replace requirement to file a publicly open SSI with employing state ed. institution - and (b) require Appeals Court judges, Supreme Court justices, Judicial Qualifications and Supreme Ct. Nominating Commission members to file the judicial financial disclosure report with the Supreme Court; (2) change in the statute requiring lobbyists to file employment and expenditure reports - add requirement that lobbyist include the date upon which food or beverage is provided when the lobbyist is required to report the provision of food or beverage.
 SENATE: Add new requirement for certain faculty to file with employing institution; add Judicial Branch SSI-like reporting requirements; add lobbyist reporting requirement.
 CONFERENCE: Revised and placed ONLY the faculty SSI piece in HB 2158 (made it an option on the part of the employing ed. inst. and set the statute to expire 7/1/2010). HB 2158 was approved by Gov.

HB 2077 House Elections Committee	Elections	In House Elections	03/04/2009 - House: Withdrawn from Federal and State Affairs; rereferred to Elections 02/19/2009 - House: Committee of the Whole: Committee Report be adopted; amendment pending; be referred to Federal and State Affairs 02/18/2009 - House: Committee Report: Be passed as amended by Elections
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Client Notes:

Would require photo identification of in-person voters, allow for the issuance of a free photo identification card to persons who qualify for certain poverty programs, change the list of acceptable identification forms for those voting by mail, require all voters to provide identification at every election, and exempt certain voters from the requirement to provide identification.

NOTE: Contents of Intro'd. version (w/ 1 clarifying change) placed in H.Sub. SB 3.

<p>HB 2156 House Local Government Committee</p>	<p>The Legislature; relating to legislators holding other elected offices</p>	<p>In House Elections</p>	<p>02/05/2009 - House: Withdrawn from Local Government; referred to Elections 01/30/2009 - House: Referred to Local Government 01/29/2009 - House: Introduced</p>
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Client Notes:

Prohibit legislator from holding concurrently any elective office in any municipality (broadly defined) if member would be entitled to compensation or other payment for holding the office.

<p>HB 2215 House Elections Committee</p>	<p>Governmental ethics; prohibiting the use of public funds for lobbying</p>	<p>In House Elections</p>	<p>02/04/2009 - House: Referred to Elections 02/03/2009 - House: Introduced</p>
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Client Notes:

Prohibit officer/employer of any city, county, USD or other political or taxing subdivision of the state from using public funds for lobbying.

<p>HB 2216 House Elections Committee</p>	<p>Contracts with state agencies</p>	<p>In House Elections</p>	<p>02/04/2009 - House: Referred to Elections 02/03/2009 - House: Introduced</p>
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Client Notes:

Prohibit person from contracting for \$5,000 or more with a state agency, when money is paid at least in part from the state treasury, unless the person is a registered lobbyist. "State agency" includes Turnpike Authority, Hospital Authority and Bioscience Authority. Requires these contracts be based on competitive bidding pursuant to KSA 75-3739.

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<p>HB 2256 <i>Rep. Talia</i> Don Hill, R-60th</p>	<p>Elections; pertaining to preregistration of certain persons</p>	<p>In House Elections</p>	<p>02/05/2009 - House: Referred to Elections 02/04/2009 - House: Introduced</p>
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Client Notes:

Would allow any person who is between 14 and 17 years of age to pre-register to vote in person, by mail, or through a voter registration agency. HB 2256 would require the Office of the Secretary of State and the Kansas Division of Motor Vehicles of the Department of Revenue to develop an early voter registration section on driver's license and non-driver identification card applications.

Representative Mike Peterson
300 SW 10th
Room 276-W
Topeka, KS 66612

James Meier
235 Pinecone Dr.
Lawrence, KS 66046

Representative Peterson,

The following is a set of documents regarding the Kansas Governmental Ethics Commission (KGEC) and their lack of transparency for the public at large.

As a member of the House Elections Committee, I am giving you this information in the hope that you will study it and learn how there is no independent way to verify the Commission is holding all public officials to the same standard.

Included is a two page summary of the problems with the KGEC. As you'll see, three issues stand out.

First, it's imperative that the difference between an investigation and complaint is addressed. Numerous times KGEC staff has told the press that issues will be "investigated," yet no official complaint can be found. Thus KGEC staff is giving the public the impression of wrongdoing when later none can be found.


Most troubling is my finding that the Commission may dismiss a complaint for lack of probable cause, yet the complaint and the information contained in it are not subject to open records requests and essentially cease to exist as far as the public is able to determine.

Also included is a copy of the complaint and evidence I filed with the KGEC, a copy of an opinion issued by the Kansas Attorney General's office regarding a recent fine handed down by the Commission and several news articles over the years that highlight problems with the KGEC.

It is my hope that you take this matter seriously and work to improve transparency on the Commission by changing the laws concerning who can serve as KGEC members and staff as well as when the public can search and have access to KGEC documents.

It is my firm belief that ultimately, it is the people of Kansas that must act as the Ethics Commission for their public officials. Due to the secrecy of the KGEC, this is currently impossible.

Respectfully submitted,



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House Elections
1-20-2010 Atch. #2

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Testimony for the Kansas Governmental Ethics Commission
To Be Delivered January 20, 2010

Subject: Proposed amendments to K.A.R. 19-6-1

Madame Chairwoman and members of the Commission, I am here to testify against changes to K.A.R. 19-6-1 in their current form.

Before considering changes to the confidentiality rules of the Commission, I believe it is vital that members publicly recognize why these changes are being sought. This is not a normal review; rather these changes are specifically being pursued to comply with a 2009 Attorney General's opinion that Ethics confidentiality rules violate the free speech rights of Kansas citizens.

I would also be remiss if I did not publicly recognize that this very Commission handed down an unconstitutional fine of \$7,500 to a private citizen who did nothing more than exercise his right to free speech. Because of the actions of this Commission, the state of Kansas now may face a costly lawsuit in federal court.

Current state statutes and regulations prohibit the public from knowing about complaints where no probable cause is found.

While I'm sure that you are confident in your findings, the fact remains that the public can not independently verify the work of the Commission. In essence, the Commission that is charged with keeping Kansas' public officials ethical cannot be checked itself by the public at large.

With the public unable to verify that this Commission is uniformly applying the law, a huge credibility problem has arisen.

However, if additional steps were taken to increase the transparency of the Commission, I believe that credibility could be restored.

Therefore, it is my opinion that the Commission should reject the proposed changes and instead conduct a full review of all regulations concerning Commission procedures, and amend them to allow the public full review of all Commission documents after a finding of facts has been made.

It is also my opinion that the Commission should pursue statutory changes with the Kansas Legislature to allow for the public review of any and all Ethics Commission documents after a finding of facts has been made.

It is my firm belief that ultimately, it is not this nine member Commission that keeps public officials ethical; it is the people of Kansas. I ask that you make the necessary changes to allow the public to do its job.

Thank you for the opportunity to testify.

Who is the KGEC?

- Enforce Kansas campaign finance laws.
- Nine members appointed by Governor, Attorney General, Senate President, Senate Minority Leader, Speaker of the House, House Minority Leader, Secretary of State, Kansas Supreme Court Chief Justice.
- Each appoints one member, except the Governor who appoints two members
- Have the authority to fine candidates who violate campaign finance laws, forward cases to District Attorney's and state Attorney General.

Who can be a KGEC Commission Member?

- Any registered voter appointed by one of the above individuals
- Anyone who has served as, "chairperson, vice chairperson or treasurer of any county, district or state political party committee" is barred from the commission for life.
- Anyone who has run for or held partisan office within five years of being appointed is barred from the commission.
- Anyone who has been a lobbyist, held an elective state office or secretary of any department of state government, made contracts for the state or provided services for the state of Kansas under contract is barred from serving for three years.
- The commission must remain "non-partisan" with no one party holding a majority of members.

Besides Commission members, who else is involved in the KGEC?

- The KGEC has full time and part time staff members that do the majority of the day-to-day work.
- Executive Director Carol Williams
 - On staff for more than a decade
 - "Face" of the Commission – speaks to press, candidates, elected officials, gives opinions on legality of candidates actions.
- Legal Counsel Judy Moler
 - On staff since middle 2008
 - Part time legal counsel
 - Was a lobbyist for Kansas Association of Counties until hired by KGEC. Held that position since at least 2001 according to Kansas Sec. Of State records.
 - Husband is still a registered lobbyist for Kansas League of Municipalities. He has held that position since at least 2001 according to Kansas Sec. Of State records.
- Investigator Bill Beightel
 - Part time investigator
- Other support staff

Who is subject to the KGEC?

- State office holders are subject to the KGEC, not federal candidates. Statewide candidates like the governor and local candidates like State Senators and State Representative are subject to the KGEC.

How does the KGEC operate? How are violations of the law prosecuted?

1. First a complaint is filed. This can be done by anyone, although until recently this was almost exclusively done by KGEC staff.
2. Once filed, the complaint is considered by the Commission in a closed meeting. No public observation is allowed. The defendant of the complaint is not allowed at the meeting.
3. At this secret meeting, the Commission can either find "probable cause" or "no probable cause."
 - a. If the Commission finds "probable cause", the complaint gets a full public hearing with all parties present.
 - b. If the Commission finds "no probable cause" the complaint is dismissed. A notice is sent to the subject of the complaint and the person who filed the complaint. This is usually KGEC staff.
 - c. **Current state law does not allow for either party to discuss a dismissed complaint. Ever.**
 - d. **The complaint remains closed record. An open record request would return no results. Essentially, the complaint is kept secret forever.**
4. The public hearing
 - a. Only evidence presented during the hearing is considered "public record" and subject to public review.
 - b. There may be other evidence not presented to the public that the Commission can consider.
 - c. The Commission deliberates behind closed doors.

How the Kansas Governmental Ethics Commission covers for corrupt politicians

What are the current problems with the KGEC?

- Current law allows the KGEC to cover up corruption by dismissing complaints before they are heard publicly.
- While an official complaint with the commission is considered confidential, meaning KGEC staff and commissioners are not allowed to speak to the press about it, investigations before an official complaint is filed are not considered confidential. Numerous times in the past KGEC Executive Director Carol Williams has spoken with the press about a possible violation of law, stating that an “investigation” will occur, but there are no subsequent official complaints found in the public record. Thus her comments are casting a negative light on actions that the commission later determines are perfectly legal.
- Current law allows certain individuals to serve on the Commission that common sense would otherwise dictate is unethical. Current Commission Member Mark Simpson, appointed by House Minority Leader Paul Davis (D-Lawrence), is the former Executive Director of the Kansas Democratic Party, but never served as Chair, Vice-Chair or Treasurer for a political party and thus can legally serve on the Commission. This also means otherwise qualified candidates may not be able to serve because of haphazard laws dictating who can, and cannot, serve on the commission.
- Current law has no provisions for oversight of the KGEC should they decide to not enforce the law or ignore it.

- Current law allows the hiring of staff members that otherwise would be ineligible to serve as Commission members. Legal counsel Judy Moler is the most recent example. While legal it gives the appearance of impropriety
- Current law allows KGEC staff to serve while immediate family members may be subject to Commission oversight. Legal counsel Judy Moler is again an example. Her husband is a registered lobbyist.
- Current law has sanctions for staff that break ethics laws but leaves the enforcement up to Commission members with whom they work side-by-side.

What’s the current case that highlights the problems with the KGEC?

- Sen. Dwayne Umbarger (R-Thayer) filed questionable campaign finance reports where he claimed an over \$1,000 expenditure for a carport to store campaign materials and hundreds of dollars in fuel expenses during harvest time.
- Kris Van Meteren, a Topeka political activist and son of Umbarger’s 2008 primary opponent, filed a KGEC complaint against Umbarger and spoke to the press about it. He was ultimately fined \$7,500 for speaking about his complaint before the Commission held its secret meeting to find “probable cause.” More than a year later, no public record exists of the complaint against Umbarger.
- Tim Carpenter was the Topeka Capital Journal reporter who wrote the story about Van Meteren’s complaint. His story noted that, “Williams said Van Meteren might have

committed a crime by speaking with The Topeka Capital-Journal about his case.” This statement confirmed for the press that a complaint had been filed, and was a violation of the same law Van Meteren was accused of violating.

- The Cap-Journal article was used to convict and fine Van Meteren \$7,500. However, when a complaint was filed against KGEC Executive Director Carol Williams, the complaint was dismissed outright for, “lack of evidence.” However, the evidence provided was the same news articles used to fine Van Meteren.
- The Kansas Attorney General’s office later issued an opinion that the KGEC fine against Van Meteren was a violation of his First Amendment rights. The Commission was forced to revoke its fine and now faces a free speech lawsuit in federal court.
- In response to the AG’s opinion and potential lawsuit, the KGEC is now attempting to amend its confidentiality provisions. However these changes still allow for the commission to dismiss a complaint for lack of probable cause and keep it from the public’s view forever.

What can I do?

- **When the KGEC comes to your committee asking for statutory changes, ask why they haven’t called for more transparency on their own Commission.**
- **Introduce legislation that will remove the KGEC’s right to keep complaint documents sealed and allow all complaints to be publicly available once a KGEC investigation is concluded.**



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STEVE SIX
ATTORNEY GENERAL

May 13, 2009

Kansas Governmental Ethics Commission
Sabrina K. Standifer, Chairwoman
Carol Williams, Executive Director
109 SW 9th, Suite 504
Topeka, KS 66612

HAND DELIVERED

Re: Constitutionality of Ethics Commission Confidentiality Rules

Dear Ms. Standifer and Ms. Williams:

You have asked this office for its opinion on whether certain confidentiality provisions for Kansas Governmental Ethics Commission proceedings – and a fine enforcing those provisions against a party filing an ethics complaint – violate the First Amendment to the United States Constitution. For the reasons below, we conclude that they do.

The Relevant Statutes and Regulation

K.S.A. 25-4161(b) states: “Whenever a complaint is filed with the commission alleging a violation of a provision of the campaign finance act, such filing and the allegations therein shall be confidential and shall not be disclosed except as provided in the campaign finance act.”

K.S.A. 25-4165 states: “All records, complaints, documents, reports filed with or submitted to or made by the commission ... shall be confidential”

K.A.R. 19-6-1 states:

(a) Except as otherwise provided by relevant law and as provided in K.A.R. 19-5-5 all records, complaints, documents, reports filed with, submitted to, or made by the commission; all records and transcripts of investigations and inquiries or hearings of the commission under this act shall be confidential. ...

(b) A person subject to an investigation or a respondent may release any report or order issued pursuant to K.A.R. 19-3-1 or K.A.R. 19-5-9 and comment thereon.

The confidentiality requirements of relevant law shall be observed by all members of the commission, its staff, and all parties to any proceedings.

The Commission has interpreted these sections to also regulate complainants, and it has fined complainants for violating them by disclosing the filing of complaints and their contents.

Discussion

In our opinion, these statutes – at least as applied to complaining parties – violate the First Amendment and cannot be enforced against those who file complaints with the Commission. Similar statutes requiring confidentiality of complaints against judges, attorneys, and elected officials have been consistently struck down as unconstitutional under the First Amendment. The cases have come from courts across the country.

The cases follow the Supreme Court's decision in *Landmark Communications, Inc. v. Virginia*, 435 U.S. 829 (1978). In *Landmark*, a Virginia newspaper published an accurate article about a pending state judicial inquiry and identified the judge being investigated. The newspaper was fined \$500.00 pursuant to a Virginia statute which made judicial inquiries confidential. The Supreme Court reversed the conviction and rejected the State's justifications for the confidentiality rules, finding them insufficient to support the actual and potential infringements on the First Amendment.¹ The Court concluded that "the publication Virginia seeks to punish under its statute lies near the core of the First Amendment."²

The Court rejected the following justifications for the confidentiality rules:

- protecting the reputation of its judges (like all other public officials);
- maintaining the institutional integrity of its courts;
- encouraging the filing of complaints and the willing participation of relevant witnesses by providing protection against possible retaliation or recrimination.

The Court acknowledged that confidentiality served legitimate state interests but found them insufficient to trump First Amendment rights. "Our prior cases have firmly established ... that injury to official reputation is an insufficient reason for repressing speech that would otherwise be free."³ The Court's rationale has been followed by state and federal courts across the country

¹ *Landmark*, 435 U.S. at 838.

² *Id.* at 838.

³ *Id.* at 841-42 (quotations and citations omitted).

in decisions striking down such confidentiality rules as they related to government ethics agencies.⁴

In addition, the Commission's statutes and regulations on confidentiality appear to be out of step with the rules of other Kansas agencies. The Judicial Branch, for example, specifically excludes both the complainant and respondent from its confidentiality rules related to complaints about judges. *See* Supreme Court Rule 607(b) ("The rule of confidentiality shall not apply to the complainant or to the respondent."). The rules relating to attorney disciplinary proceedings are similar. *See* Supreme Court Rule 222(c) ("The rule of confidentiality shall not apply to the complainant, respondent or to any information which the Board or the Disciplinary Administrator considers to be relevant to any current or future criminal prosecution against the attorney."). These rules appear to be consistent with the holdings of various courts that have struck down confidentiality rules as applied to judicial ethics proceedings⁵ and attorney disciplinary proceedings.⁶

⁴ *See Doe v. Gonzalez*, 723 F.Supp. 690 (S.D.Fla. 1988) (striking down a statute that criminalized disclosure of complaints filed with the Florida Commission on Ethics), *affirmed w/o opinion*, 886 F.2d 1323 (11th Cir. 1989); *Providence Journal Co. v. Newton*, 723 F.Supp. 846 (D.R.I. 1989) (striking down similar Rhode Island statute); *Lind v. Grimmer*, 30 F.3d 1115, 1117 (9th Cir. 1994) (enjoining enforcement of similar Hawaii statute).

⁵ *See Kamasinski v. Judicial Review Council*, 44 F.3d 106, 110 (2d Cir. 1994) (state may not prohibit disclosure of the substance of an individual's complaint or testimony as such complaints "strike[] at the heart of the First Amendment"); *First Amendment Coalition v. Judicial Inquiry & Review Board*, 784 F.2d 467 (3d Cir. 1986) ("to the extent the Board's regulation and the district court's order prevent witnesses from disclosing their own testimony, those directives run afoul of the First Amendment as impermissibly broad prior restraints"); *Doe v. Florida Judicial Qualifications Comm'n*, 748 F.Supp. 1520 (S.D.Fla. 1990) (striking down Florida law that barred disclosure of the fact that a complaint against a judge has been filed with the Florida Judicial Qualifications Commission); *Baugh v. Judicial Inquiry and Review Comm'n*, 907 F.2d 440 (4th Cir. 1990) (rejecting confidentiality provision as a valid time, place, and manner restriction).

⁶ *See Doe v. Supreme Court of Florida*, 734 F.Supp. 981, 987 (S.D.Fla. 1990) (striking down as unconstitutional a Florida rule that forbade claimants who filed attorney disciplinary complaints from speaking about the nature of the claim); *Petition of Brooks*, 678 A.2d 140 (N.H. 1996) (striking down a rule making attorney disciplinary proceedings confidential); *Doe v. Doe*, 127 S.W.3d 728 (Tenn. 2004) (striking down a rule making attorney disciplinary proceedings confidential until the disciplinary board recommended the imposition of public discipline); *R.M. v. Supreme Court*, 883 A.2d 369, 371 (N.J. 2005) (striking down rule mandating that a grievance filed against an attorney remain confidential until a formal complaint is filed).

May 13, 2009

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We are aware of statements by the Kansas Court of Appeals in *Nichols v. Kansas Governmental Ethics Com'n*, 28 Kan.App.2d 524, 535, 18 P.3d 270 (2001), describing the confidentiality rules as serving "a necessary purpose." In that case, however, Mr. Nichols does not appear to have challenged the relevant statutes, but rather the district court's action in sealing the record. In addition, the Court of Appeals did not analyze the *Landmark* case and its progeny, and the fact that confidentiality provisions may serve a legitimate purpose does not mean they can trump the United States Constitution.

For these reasons, we believe that statutes and regulations requiring confidentiality from those who file complaints against public officials are unconstitutional. To the extent that the Commission has imposed fines or other sanctions against those who may have violated them, we believe those fines are likewise unconstitutional.

Very truly yours,

OFFICE OF ATTORNEY GENERAL

STEVE SIX

A handwritten signature in black ink, appearing to read "Michael C. Leitch". The signature is fluid and cursive, with the first name "Michael" being the most prominent part.

Michael C. Leitch

Chief Counsel and Deputy Attorney General

cc: Steve Six, Attorney General
Judy Moler, General Counsel

GOVERNMENTAL ETHICS COMMISSION

MAY 19 2009

KS Governmental Ethics Commission

(Commission Use Only)

Complainant _____

Respondent _____

Complaint No. _____

COMPLAINT

A. Complainant or attorney:

Name: James D Meier
 Address: 235 Pinecone Dr
 Lawrence, KS 66046

Phone: (785) 830-8445

B. State the name and address of the person alleged to have violated the Act in question:

Name: Carol E Williams, Executive Director, Kansas Governmental Ethics
 Address: 109 SW 9th, Suite 504
 Topeka, KS 66612
 Commission

C. Complaint alleges:

violation of K.S.A. 25-4161 (b) - on or around October 19, 2008 Williams spoke
 with Tim Carpenter of the Topeka-Capital Journal and confirmed the existence of a complaint filed
 against state Senator Dwayne Umbarger by saying Kris Van Meteren may have violated the
 law by speaking with the press. Williams had previously defined the statute to mean even the
 confirmation of a complaint was a violation of law. (See attached paperwork)

(2 Attachments included)

D. Verification:

James D Meier
 (Signature of Complainant)

STATE OF KANSAS)
) SS.
 COUNTY OF Douglas)

I, James D Meier, do swear (or affirm) that this complaint (and any accompanying schedules and statements) has been examined by me and to the best of my knowledge, information and belief is true, correct and complete.

James D Meier
 (Signature of Complainant)

Subscribed and sworn to (affirmed) before me this 20th day of May, 2009

Notary Public
 State of Kansas
 Phillis Setchell

Phillis Setchell
 (Notary Public)

My Appt. Expires: 3-13-2010

My appointment expires 3-13-2010, 2010.

(- complaint alleges: - continued

Attachment #1

The article entitled, "A carport, fuel and a hotel" by Tim Carpenter of the Topeka Capital-Journal was previously admitted as evidence by the Ethics Commission, thus the truthfulness of the facts in the article have already been determined.

Violation of K.S.A. 25-4171 - This statute provides for penalties once a member of the commission or staff are found guilty of violating a provision of K.S.A. 25-4161 Williams violation of K.S.A. 25-41-61 (b) warrants removal from her position with the state, per K.S.A. 25-4171.

Violation of K.S.A. 25-4161 (b) - While the Kansas Attorney General has determined that this statute violates the constitutional rights of the accuser, the opinion does not address whether those rights are afforded to Ethics Commission members and staff. Further, if it is the determination of the commission of the Attorney General's office that staff has a constitutional right to disclose complaints filed with the Ethics Commission, then I submit that Williams still violated the law on or around October 19, 2008 because she was neither the complainant nor the subject of the complaint and therefore has no constitutional right to disclose a complaint where she is a third party. This is consistent with the interpretation provided by the Kansas Attorney General's office.



GOVERNMENTAL ETHICS COMMISSION

www.kansas.gov/ethics

May 27, 2009

James D. Meier
235 Pinecone Drive
Lawrence, KS 66046

Dear Mr. Meier:

We are in receipt of your complaint filed against Carol E. Williams, which has been designated as Complaint #446. Pursuant to K.S.A. 25-4160, Carol E. Williams, the Respondent in your complaint, has been sent your filing by certified mail.

Once a complaint is filed, such filings and the allegations contained therein are held as confidential by the Commission and staff unless and until probable cause is found on the complaint and a public hearing is scheduled.

At the Commission's June 24, 2009 meeting, it will determine whether the complaint alleges facts sufficient to constitute a violation of the Campaign Finance Act. If necessary, the Commission's staff will continue to investigate the alleged violation.

After completion of the investigation, the Commission will determine whether probable cause exists for believing the allegations in the complaint. If the Commission determines that probable cause does exist, the complaint shall become a matter of public record and a public hearing on the matter will be set. This hearing will be held within thirty days after the probable cause determination. You will be notified of the results of the Commission's deliberations.

I have enclosed a copy of the Commission's procedural regulations for your review, which cover investigations, complaints and hearings.

Sincerely,

A handwritten signature in cursive script that reads "Judith A. Moler".

Judith A. Moler
General Counsel

Enclosure



GOVERNMENTAL ETHICS COMMISSION

www.accesskansas.org/ethics

July 29, 2009

James D. Meier
235 Pinecone Dr.
Lawrence, KS 66046

Ethics Complaint No. 446

Dear Mr. Meier:

At its July 22, 2009 meeting the Commission met in Executive Session and determined that Complaint No. 446, which you filed against Carol E. Williams, Executive Director of the Governmental Ethics Commission, was sufficient on its face. After reviewing the investigative report concerning the allegations in the complaint, the Commission found insufficient evidence to determine probable cause that Carol Williams violated K.S.A. 25-4161(b) and K.S.A. 25-4171 as alleged in Complaint No. 446.

The fact that the complaint was filed, its contents and the Commission's deliberations were and are held in confidentiality by the Commission and its staff. In effect, the file has been closed.

If you have questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Judy A. Moler".

Judy A. Moler
General Counsel



GOVERNMENTAL ETHICS COMMISSION

www.kansas.gov/ethics

James D. Meier)
Complainant)

Complaint No. 446

Carol Williams)
Respondent)

ORDER OF DISMISSAL

On the 22nd day of July 2009, the Commission found there is insufficient evidence to determine there is probable cause to believe the respondent intentionally violated K.S.A. 25-4161(b) or K.S.A. 25-4171, as alleged in the complaint. The complaint is dismissed with prejudice. The Commission's General Counsel shall serve this Order upon the respondent in the same manner as the complaint.

IT IS SO ORDERED

July 29, 2009
Date

Sabrina Standifer / jan
Sabrina Standifer, Chairwoman

By Direction of the Commission

A carport, fuel and a hotel

Topeka Capital-Journal, The (KS) - Sunday, October 19, 2008

Author: Tim Carpenter THE CAPITAL-JOURNAL

The state ethics commission is wading through complaints of campaign finance impropriety made against Sen. Dwayne Umbarger, chairman of the Senate's influential budget committee.

The Kansas Governmental Ethics Commission, prohibited from publicly confirming an investigation unless a case proceeds to a formal hearing, has been called upon to address expenditures listed on the senator's July 2008 campaign report that could be for nonpolitical purposes.

"I would love to talk to you about this," Umbarger said. "I'm about a straight shooter as you're going to get."

However, the Thayer Republican, who chairs the Senate Ways and Means Committee, said state ethics rules prohibited him from publicly discussing the allegations.

A political rival of Umbarger submitted a complaint in September suggesting the senator should be investigated for unauthorized use of more than \$3,000 in contributions. Kris Van Meteren, a one-time supporter of Umbarger, said he filed documents challenging the senator's reliance on a campaign account to pay for a \$1,738 carport installed at Umbarger's home in rural Thayer in the southeast Kansas county of Neosho, to buy nearly \$1,400 in fuel and to pay \$500 for rental of a Topeka apartment.

After Van Meteren contacted the commission about what he viewed as trouble spots on Umbarger's finance report, the senator sent a letter to the commission promising to reimburse his campaign treasury for the metal carport and apartment rental. It is unclear whether he followed through with that pledge or did the same on the fuel bill.

Van Meteren said he recruited Umbarger to run for the Senate in 1996. He more recently worked on behalf of his own mother, former Kansas State Board of Education member Iris Van Meter, in her Republican primary campaign challenge of Umbarger. The senator defeated Van Meter by a margin of 65 percent to 35 percent in the August primary.

Carol Williams, executive director of the ethics commission, said the board privately reviews all complaints. These preliminary assessments of evidence aren't open to the public, she said. Neither the complainant nor the target of an allegation is permitted to comment publicly about the contents of a complaint, she said.

If evidence points to a significant problem, Williams said, the commission could convene disciplinary hearings. Those are open to the public.

Williams said Van Meteren might have committed a crime by speaking with The Topeka Capital-Journal about his case. A commission investigator in Topeka is looking into a possible counter complaint against Van Meteren.

Van Meteren said he wasn't worried about the commission turning on him.

"I'll pay the fine and exercise my free speech," Van Meteren said. "It appears to me they're trying to let him off the hook by going after me."

Williams said open dialogue early in the process would encourage people to file bogus claims and then parade those allegations around even though none of the charges may stand up to scrutiny later.

"The moment you walk in this door and file a complaint, you are prohibited by law, a class A misdemeanor, of discussing the fact that you walked in here and gave us that complaint," she said.

Umbarger said he would abide by commission policy forbidding him from defending himself at this time in public.

"If I were to tell you anything," the senator said, "I would be in violation."

Umbarger did speak to the Chanute Tribune in August, and he denied wrongdoing.

Van Meteren urged the commission to examine an entry for July 8 in which Umbarger claimed his Senate campaign should pay for a \$1,738 building bought from Carolina Carports, of Bronough, Mo. He noted on his expense report that it was for storage of "legislative service, campaign signs and campaign information." The structure, which was installed next to his home, is where the senator has parked a car. It has no sides to protect political materials from the elements.

Umbarger's letter to the commission noting his willingness to reimburse the campaign said he planned to add walls and a floor to the carport to make it suitable for storage.

The complaint from Van Meteren pointed the commission to a \$500 expenditure July 9 to the Ramada Hotel and Convention Center in Topeka. Umbarger's notation on his finance report said that payment was for "apartment rent."

"I question whether Mr. Umbarger could legitimately have his campaign pay rent on an apartment he maintains here in Topeka," Van Meteren said.

Umbarger said in his July 30 letter to the commission that "this receipt was inadvertently mislabeled as a campaign expense and is not. I will reimburse my campaign for the full amount."

Van Meteren said he amended his formal complaint last week to include a challenge of Umbarger's purchase of large quantities of fuel in Thayer with campaign resources.

Umbarger made three trips to Smithy's Express and one trip to W-G Fertilizer, both of Thayer, in a three-day span to buy "fuel for campaign." The senator charged his campaign account \$100 and \$151 for fuel at Smithy's on July 14. On that same day, he bought \$495 of fuel at W-G Fertilizer. On July 16, Umbarger spent \$500 from his campaign account for fuel at Smithy's.

In addition, the senator billed his campaign fund \$150 for "truck fuel" at Smithy's on July 21.

"He's using it as kind of a slush fund," Van Meteren said.

Tim Carpenter can be reached

at (785) 296-3005

or timothy.carpenter@cjonline.com.

Edition: Capital-Journal

Section: 1A

Page: 1

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Senator repays campaign

Topeka Capital-Journal, The (KS) - Thursday, October 30, 2008

Author: Tim Carpenter THE CAPITAL-JOURNAL

Sen. Dwayne Umbarger has repaid \$4,400 to his re-election campaign to cover expenditures tied to an ethics complaint filed by a political rival.

Umbarger's latest campaign finance report outlined more than a dozen reimbursements tied to the purchase of a carport installed at his home in southeast Kansas, rental of a Topeka hotel room and bills for "campaign fuel" from a gas station in his hometown of Thayer.

Umbarger, the chairman of the Senate Ways and Means Committee, said Wednesday he couldn't publicly address details of the case because of confidentiality rules enforced by the Kansas Governmental Ethics Commission.

"I do not want anything to jeopardize the work of the ethics commission," he said.

Kris Van Meteren, a Topeka businessman who worked to unseat Umbarger in the Republican primary, filed the complaint against the senator. He based it on questions arising from Umbarger's July report of re-election contributions and expenditures.

He said Umbarger's repayment of campaign expenditures, listed on a report filed Monday, suggested political donations were used improperly.

"There's a pattern," Van Meteren said. "The carport. The rent. The fuel. It just starts to look like a pattern."

Van Meteren has spoken openly about the case, placing himself in jeopardy of being the subject of a cross-complaint. His mother, Iris Van Meter, ran against Umbarger in the August primary. Umbarger won with 65 percent of the vote.

Carol Williams, executive director of the ethics commission, said she was prohibited from commenting on pending complaints.

Tim Carpenter can be reached at (785) 296-3005 or timothy.carpenter@cjonline.com.

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State drops ethics fine

Topeka Capital-Journal, The (KS) - Thursday, May 14, 2009

Author: Tim Carpenter THE CAPITAL-JOURNAL

The state ethics commission Wednesday dropped a \$7,500 fine imposed on a Topeka man for speaking publicly about a complaint filed against a state senator alleging misappropriation of campaign funds.

Action by the Kansas Governmental Ethics Commission followed release of an attorney general's opinion that concluded gag orders tied to ethics cases violated a complainant's First Amendment rights.

Michael Leitch, deputy attorney general, said Kansas statutes and ethics commission regulations requiring confidentiality from people who submit complaints against public officials were unconstitutional.

"To the extent that the commission has imposed fines or other sanctions against those who may have violated them," Leitch said, "we believe those fines are likewise unconstitutional."

Kris Van Meteren, of Topeka, filed a complaint against Sen. Dwayne Umbarger, R-Thayer, alleging misappropriation of campaign donations for personal use by Umbarger.

In October, the senator repaid \$4,400 to his re-election account for expenditures challenged by Van Meteren. The list included purchase of a carport installed at the senator's home, rental of a Topeka motel room and bills for "campaign fuel" from a gas station in Thayer.

The ethics commission dropped the case against Umbarger and instigated a case against Van Meteren for violating rules on confidentiality.

Van Meteren had spoken on the record to The Topeka Capital-Journal for a story outlining Umbarger's campaign spending.

The commission in February fined Van Meteren \$5,000 for engaging in an interview with The Capital-Journal and fined him \$2,500 for speaking on the same subject to the online publication Kansas Liberty.

The attorney general's opinion prompted the commission to reverse itself in the case involving Van Meteren, but that might not be the end of legal wrangling. There is an issue with attorney fees paid by Van Meteren to defend himself.

Caleb Stegall, an attorney representing Van Meteren, said his client would continue to explore "further recourse in federal courts for this clear and admitted violation" of guaranteed rights to free speech.

"Today's action is a victory for the liberties of all Kansans," Stegall said. "Unfortunately, though Mr. Van Meteren's legal rights have been clearly vindicated and he has emerged from this litigation victorious, it has not been without cost."

Stegall said the case illustrated "the abuses that can occur when agents of the state choose to use their power to advance a political agenda, to reward friends and to discourage political opponents."

Carol Williams, executive director of the ethics commission, wasn't available for an interview Wednesday on the turn of events.

Tim Carpenter can be reached

at (785) 296-3005 or

timothy.carpenter@cjonline.com.

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Ethics panel eyes Republican PACs giving cash to ed-board candidates

Hutchinson News, The (KS) - Friday, September 20, 2002

By Mary Clarkin

The Hutchinson News

The Kansas Governmental Ethics Commission has questions about some closely knit Republican political action committees that are giving money to several State Board of Education conservative candidates, including Hutchinson resident Kenneth Willard.

There are four PACs, but two names. The Free Academic Inquiry and Research Committee (FAIR) and the Kansas Republican Victory Fund each operate both a state and federal PAC. All four PACs use the same Topeka post office box as the Kansas Republican Assembly.

The Assembly is a Topeka-based organization that is "working within the Republican Party to build a powerful, enduring coalition of economic and social conservatives," according to its Web site.

"A federal PAC would be set up to support a federal candidate, not a state candidate," said Carol Williams, executive director of the Governmental Ethics Commission.

A check of the Federal Election Commission Web site did not show that FAIR's federal PAC has ever given money to a candidate for federal office.

"That is going to be questioned," Williams said.

It is legal for federal PACs to give money to state candidates, but federal PACs are formed so they can contribute to candidates running for federal office. That's because state-registered PACs can't donate to federal candidates, said Ian Stirton, with the FEC.

The multiple PACs ensure the greatest flexibility in spending campaign dollars, said Kris Van Meteren, the recently resigned executive director of the Kansas Republican Assembly. Van Meteren also served as treasurer for the PACs.

Only individuals can contribute to the federal PACs, he said.

"Because we are who we are, a grassroots organization, most of our contributions are federal contributions, are personal checks," Van Meteren said. "We choose to run them through a federal PAC, because there are the least restrictions on who we can give it to."

A personal contribution put in the state PAC, he said, could not be given to someone running for Congress.

Van Meteren routinely shifted money from the federal PACs to the state PACs.

Before the Aug. 6 primary, FAIR's state PAC gave the maximum allowed donation of \$500 each to conservative Board of Education candidates Willard; Iris Van Meter, Thayer; Connie Morris, St. Francis; and John Bacon, Olathe. FAIR's federal PAC also gave \$500 each to Willard, Van Meter and Morris.

Bacon is an incumbent, Van Meteren said, so he had an advantage not enjoyed by Willard, Van Meter and Morris.

The Kansas Republican Victory Fund federal PAC has given to a few federal candidates, such as U.S. Rep. Todd Tiahrt, R-Wichita, and Phill Kline, of Johnson County, an unsuccessful candidate in 2000 for Congress.

Both the federal and state PACs of the Kansas Republican Victory Fund gave \$500 to Morris. Thus, Morris benefited

from a total of \$2,000 from the four related PACs.

Van Meteren is the son of BOE candidate Van Meter, running for the BOE seat in southeast Kansas. She defeated moderate Republican incumbent Val DeFever in the primary, but DeFever announced a write-in bid Monday.

Willard is opposed by Hutchinson Democrat Duane Anstine. Morris is being challenged by I.B. Sonny Rundell, R-Syracuse, who lost to Morris in August but is running as a write-in candidate in the Nov. 5 general election.

"In real life," Williams said, "the Kansas Republican Assembly could set up 10 different PACs and, as long as they put money in each one, all of those PACs could give to candidates."

The Kansas Legislature once clamped down on the multi-PAC formation, but that lasted only a year, Williams said.

She questions why the two PACs are registered with the FEC when they behave like their state PAC counterparts.

Lawrence resident Jim Mullins, president of the Kansas Republican Assembly, said he would comment on the matter after he receives Williams' letter.

In the 2000 election cycle, BOE candidates Linda Holloway, Patrick Hill, Mary Douglass Brown, Steve Abrams and Brad Angell -- all running on the conservative slate -- received money from the conservative PACs.

Brown and Abrams also have contributed to at least one of the four PACs.

The PACs routinely donate money to one another. A sample of some transactions:

- July 2000: FAIR's federal PAC gave \$500 to the Kansas Republican Victory Fund's state PAC.
- April 2002: The Kansas Republican Victory Fund federal PAC donated \$500 to the FAIR federal PAC.
- July 2002: The Kansas Republican Victory Fund federal PAC gave \$250 to its state counterpart PAC.

The PACs also routinely pay The Source, with a Topeka post office box, for printing and mailing services. That is Van Meteren's business.

Elizabeth Stark, treasurer of the Kansas Republican Assembly, replaced Van Meteren as treasurer of the federal PACs on Monday and is slated to become treasurer of the state PACs, too.

Reporter Mary Clarkin can be reached at mclarkin@hutchnews.com or at (620) 694-5700, ext. 316.

Record Number: 1086D48CAAF9061

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Kline criticized over abortion records

Hutchinson News, The (KS) - Thursday, November 2, 2006

Author: John Hanna ; AP Political Writer ;

TOPEKA - Attorney General Phill Kline faced new questions Wednesday about his activities at churches, his campaign fundraising and what he plans to do with newly acquired patient records from two abortion clinics.

Bob Stephan, a former attorney general and fellow Republican who broke politically with Kline less than five weeks ago, asked the state ethics commission to examine Kline's fundraising and activities involving churches.

Among Stephan's issues was a \$1,339 donation from a Topeka church to SWT Communications, a company Kline's wife operates. The donation occurred after Kline spoke at the church in July.

The same event led Washington-based Americans United for Separation of Church and State to seek an investigation Tuesday by the Internal Revenue Service.

Kline spokeswoman Sherriene Jones was confident there are no problems with such activities.

"We will provide the ethics commission with anything they request if they decide to look into Mr. Stephan's letter," she said.

Meanwhile, Pedro Irigonegaray, a Topeka attorney representing the two abortion clinics, said he fears Kline, an abortion opponent, will raid those clinics to create potential "photo opportunities." He made the comment a day after Kline confirmed receiving edited versions of the records of 90 patients.

Kline called the statements "reckless and knowingly false."

He began a new television ad Tuesday night defending his two-year pursuit of the records of 90 patients as necessary to investigate rapes of children and potentially illegal late-term abortions.

Democratic challenger Paul Morrison continued to criticize Kline's efforts to obtain the records as invading patients' privacy. But Mark Simpson, Morrison's campaign manager, wouldn't predict what the Democrat would do with the records if he is elected, saying only, "He'll evaluate the situation."

The race between Kline, who is seeking a second term and Morrison, the Johnson County district attorney, remained intense and bitter with less than a week before the Nov. 7 election.

Stephan already has publicly criticized Kline over the donation to SWT from the Light of the World Christian Center in Topeka. The church's pastor did not return a telephone message Wednesday.

Kline speaks regularly during church services and to church groups, discussing how he and his estranged father reconciled and the importance of people having God in their lives.

But he also wrote an internal memo in August outlining an effort to fully tap his support among conservative churchgoers, with directions to staff that included having friendly pastors bring "money people" to outside events.

Stephan raised two other issues in his letter to the Governmental Ethics Commission.

One was \$3,600 in payments from the Kline campaign to SWT in January to store documents and furniture in a metal building behind the Klimes' home. The other was Kline not itemizing more than \$41,000 in contributions of \$50 or less on his latest campaign finance report, filed Monday.

"It may turn out that everything is hunky dory," Stephan said during an interview. "I don't think you should take

everything for granted, that something is in accordance in the rules, just because some politician tells you it is."

Jones said the campaign kept a complete list of donors, no matter how small, but noted that Kansas law doesn't require the itemization of contributions of \$50 or less.

As for Stephan's other questions, she said, "It goes back to the former attorney general having proof to back his accusations."

Carol Williams, the commission's executive director, would not confirm it had received a letter, though Stephan faxed a copy to The Associated Press.

Caption: . Also, in keeping with state law, Williams would not say whether the commission was conducting any investigation. Nor would IRS officials in Washington, when contacted about the request for an investigation from Americans United. The Rev. Barry Lynn, a United Church of Christ minister who is the group's executive director, wrote Tuesday that Kline's campaign appeared to have a "close working relationship" with the Topeka church. Federal law prevents nonprofit groups such as churches from "intervening" in partisan elections. "Churches ought to be obey the laws like everyone else," Lynn said. "In a broader sense, when churches become enmeshed in partisan political activity, it usually degrades the integrity of the church's program." Jones called the request for an IRS investigation "just another tactic by Morrison supporters to try to distract voters from the issues that they should be focused on in this attorney general's race." Lynn said his group is nonpartisan and acting independently, adding, "Frankly, I wouldn't know Paul Morrison if he ran into me in the street on a bicycle." Kline also has received national attention through his pursuit of the patient records from clinics operated in Wichita by Dr. George Tiller and in Overland Park by Planned Parenthood of Kansas and Mid-Missouri. Abortion rights groups have accused him of conducting a fishing expedition. A Shawnee County district judge turned over copies of the records, edited so that patients could not be identified, to Kline on Oct. 24. Investigators are reviewing them for possible crimes, including rape of a child, forcible rape, incest, illegal late-term abortions and making a "false writing." In his latest ad, Kline says Tiller and others have spent millions of dollars to lie and "buy the office of attorney general." Simpson described Kline's ad as misleading. "As attorney general, Paul is going to follow the law, not twist it and shape it," Simpson said. Irigonegaray said the clinics fought Kline to protect their patients' privacy. "My real fear is that for no other reason than a political gain, Mr. Kline would find a way of busting into these clinics, terrorizing innocent patients," Irigonegaray said. "I have an immense concern that such action would happen because of the photo opportunities that kind of tactic would provide to him." Kline responded: "That's reckless and knowingly false, thoroughly designed to continue a campaign based on lies." The attorney general questioned the clinics' motives by pointing to a 2005 law applying when a girl 13 or under seeks an abortion. Doctors must send a fetal tissue sample to the Kansas Bureau of Investigation, along with the girl's name and other personal information. The attorney general said since the law took effect, he has referred 21 cases of potential child rape to prosecutors based on tissue samples. Kline said that raises questions about why the clinics fought subpoenas for their records. "We received broader information automatically from the clinics than we did under the subpoenas," he said. But Irigonegaray said legislators approved the law, while restrictions on what Kline saw from patient medical records were imposed by an independent judiciary.

Record Number: 115289E4463971E0

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19-6-1. Nondisclosure and public record. (a) (1) Except as otherwise provided by relevant law and as provided in K.A.R. 19-5-5, the following shall be confidential:

(A) All records, complaints, and documents, of the commission and all reports filed with, submitted to, or made by the commission; and

(B) all records and transcripts of investigations, and inquiries, and of hearings of the commission under ~~this act shall be confidential~~ K.S.A. 46-215 et seq. and K.S.A. 25-4142 et seq. and amendments thereto. ~~They~~

(2) The items specified in this subsection shall not be open to inspection by any individual other than a member of the commission, an employee of the commission, or a state officer or employee designated to assist the commission.

(b) Nothing contained herein prohibits disclosures as are in this regulation shall prohibit any disclosure that is reasonable and necessary to properly investigate any matter. The following shall be public records and open to public inspection:

(1) ~~a~~ Each complaint and any amendments after a ~~probable cause~~ determination that probable cause exists;

(2) ~~an~~ each answer and any amendments with the consent of the respondent;

(3) ~~all matters~~ any matter presented at a public meeting or public hearing; and

(4) ~~all reports~~ each report of the commission stating a final finding of fact.

~~(b) (c)~~ A Any person subject to an investigation ~~of a~~ and any respondent may release any report or order issued pursuant to K.A.R. 19-3-1 or K.A.R. 19-5-9 and may comment thereon on the report or order. The confidentiality requirements of relevant law shall be ~~observed~~ met by all

members of the commission, and its staff, ~~and all parties to any proceedings~~. (Authorized by
K.S.A. ~~1979~~ 2008 Supp. 25-4119a, K.S.A. 46-253; implementing K.S.A. 25-4161, 25-4165,
46-256, and 46-259; effective, E-76-52, Oct. 24, 1975; effective, E-77-20, May 1, 1976;
effective Feb. 15, 1977; amended May 1, 1980; amended P-_____.)

25-4161: Complaint, confidentiality and determination of sufficiency; investigation; notification of attorney general of violation of other laws; dismissal or hearing on complaint; remedies and protections for state employees filing complaints. (a) If a complaint is filed and the commission determines that such verified complaint does not allege facts, directly or upon information and belief, sufficient to constitute a violation of any provision of the campaign finance act, it shall dismiss the complaint and notify the complainant and respondent thereof.

(b) Whenever a complaint is filed with the commission alleging a violation of a provision of the campaign finance act, such filing and the allegations therein shall be confidential and shall not be disclosed except as provided in the campaign finance act.

(c) If a complaint is filed and the commission determines that such verified complaint does allege facts, directly or upon information and belief, sufficient to constitute a violation of any of the provisions of the campaign finance act, the commission shall promptly investigate the alleged violation.

(d) The commission shall notify the attorney general of any apparent violation of criminal law or other laws not administered by the commission, which is discovered during the course of any such investigation.

(e) If after the investigation, the commission finds that probable cause does not exist for believing the allegations of the complaint, the commission shall dismiss the complaint. If after such investigation, the commission finds that probable cause exists for believing the allegations of the complaint, such complaint shall no longer be confidential and may be disclosed. Upon making any such finding, the commission shall fix a time for a hearing of the matter, which shall be not more than 30 days after such finding. In either event the commission shall notify the complainant and respondent of its determination.

(f) The remedies and protections provided by K.S.A. 75-2973 and amendments thereto shall be available to any state employee against whom disciplinary action has been taken for filing a complaint pursuant to this act.

History: L. 1981, ch. 171, § 20; L. 1984, ch. 145, § 2; L. 1988, ch. 369, § 1; L. 1990, ch. 129, § 5; L. 1991, ch. 150, § 14; July 1.

25-4165: Commission records; confidentiality; release to attorney general and certain prosecuting attorneys; public records. The commission shall maintain a record of its investigations, inquiries, and proceedings. All records, complaints, documents, reports filed with or submitted to or made by the commission, and all records and transcripts of any investigations, inquiries or hearings of the commission under the campaign finance act shall be confidential and shall not be open to inspection by any individual other than a member of the commission, an employee of the commission, or a state officer or employee designated to assist the commission, except as otherwise specifically provided in the campaign finance act. The commission may, by adoption of a resolution, authorize the release to the attorney general or to the county or district attorney of the appropriate county of any information, records, complaints, documents, reports, and transcripts in its possession material to any matter pending before the attorney general or any county or district attorney. All matters presented at a public hearing of the commission and all reports of the commission stating a final finding of fact pursuant to K.S.A. 25-4164, shall be public records and open to public inspection.

25-4171: Violation of certain provisions of act declared misdemeanor; additional penalties for violation of confidentiality provisions by commission members and employees. (a) Intentional violation of any provision of K.S.A. 25-4144, 25-4145, 25-4146, 25-4147, 25-4151, 25-4154 or 25-4165 and amendments thereto, or K.S.A. 25-4157a, or the confidentiality provision of K.S.A. 25-4161 and amendments thereto, is a class A misdemeanor.

(b) In addition to any penalty imposed under subsection (a) of this section, any member of the commission convicted of violating the confidentiality provisions of K.S.A. 25-4161 and amendments thereto shall be removed from membership on the commission and any employee of the commission convicted of violating the confidentiality provisions of such section shall be discharged from employment by the commission. No member or employee of the commission convicted of violating the confidentiality provisions of K.S.A. 25-4161 and amendments thereto, shall be permitted to enter into any contract with or be employed by the state of Kansas or any agency or political or taxing subdivision thereof within five years next following the date of such conviction.