

## MINUTES

# House Select Investigative Committee

March 18, 2010  
Room 159-S, State Capitol

### Members Present

Representative Clark Shultz, Chair  
Representative Carl Holmes, Vice-Chair  
Representative Nile Dillmore, Ranking Minority  
Representative Bob Grant  
Representative Jeff King  
Representative Jerry Henry

### Members Absent

None

### Staff

Raney Gilliland, Kansas Legislative Research Department  
Athena Andaya, Kansas Legislative Research Department  
Mary Torrence, Revisor of Statutes  
Gary Deeter, Committee Secretary

### Conferees

Representative Paul Davis, Minority Leader, Kansas House of Representatives

### Others Attending

See attached sheet

The Chairman called the meeting to order, noted a search for historical precedents (Attachment 1), further noted distribution of a document supporting the position of the complainant (Attachment 2), and welcomed Representative Paul Davis, Minority Leader, Kansas House of Representatives, who presented the Complaint, which was signed by the six leadership members of the minority party (Attachment 3).

Leader Davis briefly traced the history of the office of Speaker of the House of Representatives, noting that Speaker O'Neal is the 70<sup>th</sup> Representative to hold the office. He stated that the office is to be held in high esteem, but also comes with higher standards of accountability.

Leader Davis reviewed the events that led up to the Complaint, citing the Speaker's

current opposition to the sweep of special fee funds into the State General Fund, even though earlier votes by the Speaker supported such action. He cited a list of clients which, as a private attorney, the Speaker represented; Mr. Davis concluded that a conflict of interest existed when the Speaker represents some of the most influential interest groups in the state.

Further, Leader Davis referenced a letter from the Barton County Attorney Richard Boeckman which made it appear that the Speaker, as a private attorney, was soliciting clients for a class action against the State of Kansas, a lawsuit which, if successful, could bring a significant financial benefit to the Speaker if the contract calls for a contingency fee for the Speaker. Mr. Davis concluded that such relationships and actions constitute misconduct. He said that, although misconduct is not defined by statute or House rules, questions of the Speaker's integrity and the Speaker's pattern of conduct lead to a clear albeit subjective conclusion of misconduct. He concluded by stating that if the Speaker recuses himself from the lawsuit, the Complaint will be withdrawn.

Leader Davis responded extensively to members' questions.

Responding to a question, Leader Davis acknowledged that some of the allegations can be considered ancillary, even though they provide a context for the primary complaint—that the Speaker is using his position to enhance his relation with special interest groups who are his private clients, and that, by filing of a lawsuit against the state while having significant legislative influence on the outcome of the lawsuit, the Speaker stands to profit as a private lawyer.

A member posed a series of questions to ascertain how the Speaker's actions are considered misconduct, to which Leader Davis replied:

- A legislator-lawyer may represent a client when dealing with administrative actions before a state agency unless, as a legislator, the attorney is or was involved in the legislation from which the lawsuit arose. As an example, he cited as inappropriate a legislator-lawyer representing the Schools for Fair Funding, which brought the Montoy case to the Kansas Supreme Court.
- A legislator not in a leadership position could acceptably solicit a client to bring a suit against the state, but legislative leadership should be held to a higher level of integrity.
- It is acceptable for a lawyer-legislator to represent a lobbyist if there is no clear relationship between the legal service and present or future legislation.
- A legislator who receives fees for legal services from a variety of lobbyists or associations, especially if the lobbyists represent powerful special interests, displays a pattern that rises to the level of misconduct.
- The Speaker did not violate any statute, rule of the House of Representatives, or

professional standards, nor is there any case law to act as precedent regarding this Complaint.

- To better establish the validity of the Complaint, further information from the Barton County Attorney may ascertain whether the Speaker's legal fees are hourly or on contingency.
- The appearance of impropriety equals misconduct in the Speaker's case, as evidenced by the contextual pattern of behavior and the media editorials.

Responding to another member's question, Leader Davis replied that the Speaker's conduct reflects poorly on all legislators, but that developing rules or guidelines to define misconduct would limit legislative flexibility in dealing with such cases.

Another member's questions prompted further responses from Leader Davis:

- Although attorney-client privilege is considered sacrosanct, information regarding compensation could be obtained through executive session of the Committee, or the Revisor might view the contract and report pertinent information to the Committee.
- Compensation from the lawsuit is an important consideration; it shows whether or not the Speaker profited privately by using his position as Speaker, especially if compensation is being paid by the special interest groups listed in the lawsuit.
- The Complaint is lodged with the legislature rather than the Ethics Commission because the Ethics Commission does not deal with this kind of situation.
- No statutes address prohibition of contingency fees.
- The Barton County letter, while not stating definitively, appears to indicate a contingency-based fee.

Replying to another series of questions, Leader Davis stated that:

- If Speaker O'Neal were replaced in the lawsuit by another of the firm's attorneys, the complainants would not rescind the Complaint; however, they would rescind the Complaint if the Speaker were to provide assurances that he would receive no remuneration from the lawsuit.
- If the Speaker received remuneration from special interests for non-legislative issues, there would be no reason for the Complaint.
- The charge of misconduct was brought about by a combination of two issues:
  1. The Speaker filed a lawsuit against the state while presiding over legislation that could influence the outcome of the lawsuit; and
  2. The clients in the lawsuit are special interest groups that have business before the legislature.
- The two charges are interrelated and cannot be separated.
- If the Speaker and his law firm withdraw from the lawsuit, the Complaint will be withdrawn. If the investigation goes forward, the Complainants do not wish to

recommend reprimand, censure, or expulsion; that is the Committee's responsibility.

Responding to further questions, Leader Davis replied that compensation is a key issue in the Complaint. Drawing the line on misconduct cannot be decided on one issue; the Committee must consider the collective pattern of the Speaker's position and performance. In so doing, the appearance of impropriety—and, therefore, misconduct—is apparent, since a Speaker must be held to a higher standard. The issue before the Committee is different from that of a teacher-legislator, whose vote for educational funding does not result in specific compensation for one teacher, but retains the arms-length distance between a legislator and a lobbyist. Even if Speaker O'Neal were Legislator O'Neal, there is no arms-length distance in this lawsuit.

The Chair thanked Leader Davis for his testimony and his responsiveness to questions.

Members discussed a mechanism for requesting further documentation. The Chair suggested requests be submitted to him by Friday, March 19, 2010. A member observed that information surrounding the Barton County letter would be a key component in understanding the lawsuit fee structure.

The meeting was adjourned at 4:20 p.m. The next meeting is scheduled for Tuesday, March 23, 2010.

Prepared by Gary Deeter

Approved by the Committee on:

March 30, 2010



## 1951 Committee

From: Cindy Roupe <cindyr@Kslib.info>

To: RepCarl@aol.com

Date: Wed, Mar 17, 2010 4:46 pm Wed, Mar 17, 2010 4:46 pm

Representative Holmes,

This information may no longer be relevant but I wanted you to know that I continued to look for the existence of legislative committees that were investigating members.

So far I've gone back as far as 1930 and have not found any other committees. I even double checked from 1979 to 1951.

Cindy

*Attachment 1  
HSIC 3-18-10*

GILLILAND & HAYES, P.A.

ATTORNEYS AT LAW

ROBERT J. GILLILAND  
JOHN F. HAYES †  
JAMES R. GILLILAND  
JOHN S. SCHMIDT  
BRUCE B. WAUGH °  
MICHAEL R. O'NEAL  
BRADLEY D. DILLON  
GERALD L. GREEN  
KENT G. VOTH  
SCOTT J. MANN  
JOHN K. SHERK, III °  
CAROL A. ZUSCHEK †

° ADMITTED IN MISSOURI

† ADMITTED IN KANSAS AND MISSOURI

335 NORTH WASHINGTON, SUITE 260  
P.O. BOX 2977  
HUTCHINSON, KANSAS 67504-2977  
(316) 662-0537

THE QUARTERS, SUITE 121  
310 WEST CENTRAL  
WICHITA, KANSAS 67202  
(316) 262-2266

1211 PENNTOWER  
3100 BROADWAY  
KANSAS CITY, MISSOURI 64111  
(816) 733-3100

February 9, 1989

Re: Workers' Compensation Matters

Dear

Enclosed please find a packet of information which you may find helpful and which you may wish to share with other claims representatives. In my capacity as a member of the House Labor and Industry Committee, I come into possession of a great deal of information which is not generally made available to the Bar or the insurance industry. I have found that this information helps to give me some insight on the direction the Workers' Compensation office is going with regard to particular issues. I have found the information regarding the Department's rehabilitation efforts to be particularly useful. One of the enclosures is a fairly good summary of the 1987 legislative changes made to the Kansas Workers' Compensation laws. The second enclosure is a presentation prepared by our good friend, John Ostrowski of the claimant's bar.

I am also enclosing copies of three decisions, two from the Director's office and one from the Kansas Court of Appeals which are of some significance. The Court of Appeals' recent decision in Rowland v. Val-Agri, Inc. will be helpful to our insureds who have questions regarding their right to terminate an employee while a workers' compensation claim is still pending when that employee is unable to return to work and the respondent has a need to fill the position in the meantime.

The Hudson decision sets forth the Director's position that claimants asking for a second preliminary hearing or more must again give respondent seven days notice of the intent to file for preliminary hearing. John Ostrowski's firm had been recommending the filing of successive applications for preliminary hearing as a way

Attachment 2  
ASIC 3-18-10

Page two

of forcing respondents into paying benefits voluntarily. The Hudson decision also stands for the proposition that an ALJ lacks jurisdiction to order compensation benefits to be paid for dates prior to an application for preliminary hearing without a specific showing on the record of unusual circumstances.

The Thomas decision was recently rendered in a case in which I was involved, and it demonstrates that the Director is not timid about denying workers' compensation claims where the claimant has failed to meet his burden of proof. The decision sets forth the Director's opinion that the amendments to the Workers' Compensation Act which became effective July 1, 1987 with regard to the claimant's burden of proof were procedural and not substantive, and therefore were entitled to retroactive application.

During a House Labor and Industry Committee meeting, we were briefed on a case which was recently brought to light in Wichita where Gary Winfrey and his associate, Chuck Hess, representing USF&G, were found to have called a vendor into their office and ordered the vendor to prepare a report in a certain way which would be favorable to the insurance company. Some disciplinary action may be taken in that case. Actually, I think that the rehabilitation procedure is working fairly well, given the fact that it is an entirely new law. The fact that claimants' attorneys are complaining so much about it indicates to me that it must be working fairly well. However, as a way of counteracting some of these complaints, I would be happy to take to the Committee any suggestions that you may have for improvements from an insurance company's viewpoint.

If you have any questions regarding any of the enclosed information or any other matter, please let me know.

Sincerely,

GILLILAND & HAYES, P.A.

*Michael R. O'Neal*  
Michael R. O'Neal *by AL*

MRO:hw

enclosures:



# The Hutchinson News

Tuesday, October 24, 1989; Hutchinson, Kansas, 22 Pages, Year 118 N

\*\*\*\*CAP  
96

35c

7504

2-3

ood  
ing!

## O'Neal denies improprieties

By Alan Montgomery  
The Hutchinson News

Rep. Mike O'Neal has been accused by a fellow lawmaker of using his status as a legislator to sweeten his image with his private law clients, which include insurance companies in eastern Kansas.

In a report to Kansas Division of Worker's Compensation Director Robert Anderson, as well as in an interview in Sunday's Kansas City Star, Rep. Anthony Hensley,

D-Topeka, questioned O'Neal's motives in sending an information packet to several insurance companies in February.

O'Neal, a Republican from Hutchinson, sent a two-page letter with the packet to at least three insurance companies for whom he performs legal services.

A copy of the letter and the information packet was supplied Monday to The Hutchinson News by O'Neal.

Hensley could not be reached



Hensley

O'Neal

Monday for comment. In his written comments to Anderson, Hensley said he found "par-

ticularly distressing" a remark O'Neal made about a revision in worker's compensation law he helped enact in a prior session — a change that reduced or capped damage awards in certain types of injury claims.

"The fact that claimants' attorneys are complaining so much about it indicates to me that it must be working fairly well," O'Neal wrote in the Feb. 9 letter to the insurance companies.

"However, as a way of

counteracting some of these complaints, I would be happy to take to the (House-Labor and Industry) committee any suggestions that you may have for improvements from an insurance company's viewpoint," he wrote.

In an interview Monday with The News, O'Neal said he had done nothing wrong.

"We get a lot of direct input from special interest groups on modifications in the law," he said.

See O'NEAL, Page 3

## O'Neal

Continued from Page 1

"I was interested in their input and was supplying them with a platform to speak from."

O'Neal said he is a "defense-oriented trial lawyer" who does a significant amount of business in cases involving insurance claims. As such, he said, he is in a position to observe application of Kansas laws and see whether

they are working in the best interest of society.

It is no coincidence, he said, that he is chairman of the House Judiciary Committee and serves on the House Labor and Industry Committee.

"We ask to be on committees," he said. "We have some input on what committees we're on. We want to be on ones we have interest in."

Hensley questioned the propriety of O'Neal sending a packet of information — which O'Neal

acquired in the Labor and Industry Committee — to the insurance companies.

In his letter to the companies, two of which are based in Overland Park, O'Neal noted that he was doing them a special service by giving them the data.

"In my capacity as a member of the House Labor and Industry Committee, I come into possession of a great deal of information which is not generally made available to the Bar or the insurance industry," he wrote. "I have

found that this information helps to give me some insight on the direction the Worker's Compensation office is going with regard to particular issues."

O'Neal, in his Monday interview, said the reports were not confidential.

"For crying out loud, the information was given to the full committee during a public hearing by the Director of Worker's Compensation. It wasn't secret."

The information — which included maps of revised judicial

districts and bulletins on worker's compensation law — is available to anyone who requests it from the Division of Worker's Compensation, he said.

One of the virtues of a citizen legislature is that the lawmakers spend 90 days of each year making the law, then go live and work with those laws the rest of the year, he said.

"The citizen legislator knows best where changes need to be made," he said.

2-4

# Lawmaker's letter to companies raises question of ethics

By Rich Hood  
and Jim Sullinger  
staff writers

An influential Kansas lawmaker's letter to several insurance companies is prompting accusations that he used his elective office to drum up business for his law firm.

In the letter, state Rep. Michael O'Neal offered the insurers information he gained as a lawmaker, warned about two competing lawyers and said he would present the companies' concerns to a legislative committee.

Democratic state Rep. Anthony Hensley said O'Neal, a Republican from Hutchinson, committed "a very serious breach of ethics" in sending out the letter this year.

Copies of the letter were obtained by legislators, who circulated it this year among colleagues, and by The Kansas City Star.

O'Neal is chairman of the House Judiciary Committee and serves on the House Labor and Industry Committee, both of which deal with insurance legis-

O'Neal denied any wrongdoing Friday and said he sent the letters only to companies that already were clients. He said he was updating them on legislative developments, not trying to sell his law firm's services.

O'Neal added that criticism of the letter stemmed from a dispute over workers' compensation laws between labor-oriented Democrats and business-backed Republicans.

But Hensley, a Topeka Democrat who serves with O'Neal on the House Labor and Industry Committee, said he believed the letter was improper.

"It could be construed as a solicitation letter, but what he's really doing is using his official position as a state legislator to cast himself in a favorable light," Hensley said.

"This guy is serving on two committees, Judiciary and Labor and Industry, which are the two committees in the Legislature that are probably as important to insurance companies as any two in the Legislature," Hensley said.

Questions about the letter have sur-

See Ethics, pg. 6B, col. 1

## Ethics continued from pg. 1B

lators in a controversy over lawmakers who also are lawyers and who receive legal fees from the state. Among lawmakers' firms, O'Neal's got the third highest total from the state last year—\$114,050.

O'Neal's letter mentions his role on the Labor and Industry Committee, which handles legislation dealing with workers' compensation. Insurance companies successfully lobbied the Legislature in 1987 for a law that critics say made it more difficult for workers to get benefits.

As chairman of the Judiciary Committee, he also has a hand in medical malpractice legislation, another issue of interest to insurance companies.

Hensley said O'Neal had supported statutory limits on jury awards in medical malpractice cases, apparently while representing malpractice insurers.

A legal directory lists at least 22 insurance companies as clients of O'Neal's law firm, Gilliland & Hayes of Hutchinson.

In a telephone interview Friday from Topeka, O'Neal declined to identify the companies he represents or those to which he mailed his letter, dated Feb. 9 on Gilliland & Hayes stationery.



Michael O'Neal

in the letter, which he urged recipients

official capacity, that would clearly fall within the definition of confidential information."

O'Neal saw no such violation. He said the letter contained only "information that is available to everybody," but added it would not have been readily available to those who most needed to know about it unless the bar association picked up the information and disseminated it.

State Rep. Donna Whiteman, a Hutchinson Democrat on the Labor and Industry Committee, said lawyers should avoid even the appearance of impropriety.

"Attorneys who are legislators are held to a strict standard of that," she said. "What struck me when I read that (O'Neal's) letter was that it was written on his legal stationery."

"At issue is whether legislators should use their part-time legislative positions to enhance or solicit even more business than what they would normally get," Whiteman said.

Whiteman, also a lawyer, said she would never have written such a letter.

But O'Neal said nothing improper was in his letter.

Date:

Thurs. 2-9-95

Journal

Hutchinson News

Olathe Daily News

Johnson County Sun

Parsons Sun

the negligent doctor or the doctor's insurance company must cough up \$500,000.

Kansas  
nal W  
rcury

Pittsburg Morning Sun

Personal-injury lawyers and victims of malpractice say it is only proper that a doctor be forced to pay for his mistakes, even if *someone else already has*. Doctors say doubling the cost of medical mistakes makes their malpractice insurance ultimately unaffordable or adds to everyone's cost for health care.

Hutton is a member of Michaud, Hutton, Fisher and Andersen, a firm that specializes in representing plaintiffs in medical malpractice lawsuits. The firm has had some spectacular successes, most notably with a 1980s

It is not a coincidence, he said, that he has been wrongly accused by a member of Kansas Trial Lawyers, the very same organization that has contributed generously to the campaigns of his Democratic election opponents.

Courier

The changes are opposed by groups besides the trial lawyers, including the Kansas County and District Attorneys Association, the Kansas Bar Association, the AFL-CIO, Survivors of Silicone and the Kansas Coalition Against Sexual and Domestic Violence.

In his letter to Carol Williams, executive director of the Standards & Conduct Commission, Hutton wrote:

"O'Neal is personally and financially benefiting from his role as a legislator when he initiates

and seeks legislation that benefits his client, the Kansas Medical Mutual Insurance Company. I have been involved in litigation against Mike O'Neal and his client ... and believe he should not further his client's interest by seeking legislation which would lessen their liability. No wonder the public has a great mistrust towards politicians."

Williams is barred from discussing complaints under investigation by her agency. Previous agency rulings on conflict-of-interest questions show that a direct and specific financial gain must be alleged or documented before a legislator's action is investigated as a potential violation of ethical standards.

Hutton made a copy of his letter available to Harris News Service. O'Neal said if Hutton's complaint were serious, he would have kept it confidential until the agency acted.

O'Neal said the committee will act on the proposed legislation sometime within the next two weeks.

class-action against a tampon manufacturer on behalf of sufferers of toxic shock syndrome.

O'Neal is with the Hutchinson law firm of Gilliland and Hayes. In private practice, he is hired to defend doctors and their insurance companies.

The pair are courtroom and political adversaries. Hutton, a member of the Kansas Trial Lawyers Association, has been a fund-raiser for Democratic candidates. O'Neal is a conservative Republican. And conservative Republicans at the state and national level love to portray trial lawyers as the culprits in an overly litigious society.

It is especially easy for Republicans to criticize trial lawyers, who as a group are an important money-raising constituency within the Democratic Party.

The changes being considered by the legislative committee that O'Neal heads are backed by some of the state's largest corporations — the Kansas Medical Society and Kansas Medical Mutual Insurance Company, the main mal-

practice insurer of doctors in Kansas. KaMMCO is an important O'Neal client. But it is coincidence, or at least immaterial to the "collateral source" debate, O'Neal said, that he and his client are in agreement at the Statehouse.

# O'Neal denies he profits from post

By Mike Shields  
Harris News Service

TOPEKA — A Wichita trial lawyer has accused the chairman of the House Judiciary Committee of using public office for personal gain.

But the accused lawmaker, Rep. Mike O'Neal, R-Hutchinson, said the charges made in a letter Tuesday from attorney Andrew Hutton to the state Government Standards & Conduct Commission are political "cheap shots" meant to discredit him and "create a cloud" of suspicion aimed at diverting the direction of an important legislative debate.



O'Neal

The debate is over a proposed change in law, vetoed last year by then-Gov. Joan Finney, that favors doctors and insurance companies by decreasing the damages awarded to victims of medical malpractice and other injuries. The changes would undo what lawyers call the "collateral source rule."

The rule prohibits juries deciding damage awards from hearing about "collateral source" benefits paid to injured parties. For example: A doctor sews a patient's

liver to his foot. He is sued for malpractice. The jury cannot be told that the patient's insurance company already has paid \$500,000 to correct the doctor's error. Having heard in court the medical costs to the patient, but ignorant that some or all have been paid, the jury declares that

25 34

Date: 2-10-95 JAL

- Topeka Capital Journal
- Wichita Eagle
- Kansas City Star
- Emporia Gazette
- Garden City Telegram
- Hays Daily News
- Hutchinson News
- Johnson County Sun
- Kansas City Kansan
- Lawrence Journal World
- Manhattan Mercury
- Olathe Daily News
- Parsons Sun
- Pittsburg Morning Sun
- Salina Journal
- Winfield Daily Courier

# Editorials

## Sacred trust

It makes us blue to see Rep. Mike O'Neal, R-Hutchinson, of all people — since he is chairman of the House Judiciary Committee — not jump on the ethics bandwagon now that he is in a glaring spotlight of potential conflict of interest.

It appears O'Neal is on the side of the angels in promoting a law to lessen the impact of malpractice against Kansas doctors by promoting judicial openness. The law was changed in the name of common sense last year by lawmakers, but vetoed by Gov. Joan Finney, a Democrat.

Trial lawyers are major donors to Democrats.

Trial lawyers seek to keep jurors ignorant of all the facts about how much money has already been forked over because of medical malpractice, claiming it will harm their clients. Obviously, if their clients are hurt by such openness, so are their pocketbooks.

Meanwhile, doctors and others in the business of medicine are, as a rule, big donors to Republicans.

It is the link of this big money that a Wichita attorney spots, and points out.

"O'Neal is personally and financially benefiting from his role as a legislator when he initiates and seeks legislation that benefits his client, the Kansas Medical Mutual Insurance Company." Wichita trial lawyer Andrew Hutton complained to the Kansas Government Standards and Conduct Commission.

We must agree with Hutton. O'Neal should never be in a posi-

tion to be seen as both lawmaker — especially heading the judiciary — and lawyer-lobbyist. The web is too tangled. There must be a way for attorney lawmakers, and even governors, to recuse themselves when they have a direct stake in any matter before the body of public servants who are so important to the people.

O'Neal is right to say the current situation is a political cheap shot. He and Hutton tangle over money in court and in the halls of the Kansas Statehouse.

And yet O'Neal's position invites political cheap shots that hit a fat target.

Making law is a sacred trust.

Cynics don't, or won't, believe that.

Cynics believe the people are not so fed up that they are still paying attention. If they work in the dark, and do the "right thing," in their view, who's to know?

Cynics are to be found in both of our state political parties.

Cheap-shot sniping can be expected to grow until lawmakers force their roles back toward sacred trusts.

Whining and crying foul works politically for a time — but not, we guess, much longer, as it didn't in federal politics.

O'Neal and his committee could become Kansas heroes by working on a tough, open ethics law that demands that lawmakers come clean about any of their potential conflicts. The people could judge by their voting, as they have already started to do nationwide.

## Warden Hannigan

As Congress grapples with crime, our own Robert Hannigan has been battling crime behind bars for 35 years. Apparently, with some success.

Hannigan, warden of the Hutchinson Correctional Facility, has been named "Warden of the Year" by the North American Association of Wardens and Superintendents. It is considered the Academy Award for wardens.

Hannigan, who has worked for the Kansas Department of Corrections for 35 years, still believes prison can rehabilitate those convicted of crimes. In fact, he's still as strongly committed to it as he was 35 years ago.

His views on rehabilitation, though, are considered antiquated by some. There are those who say prison does not rehabilitate, never has, never will. What prison does, they say, is keep criminals off the streets, away from decent people. Nothing more, nothing less.

Furthermore, it usually has the opposite effect on a person. Prison

can take a person, who otherwise was on the cusp, and turn them into a hardened criminal. Prisoners must learn to survive in a world driven by the most vile forces of nature; dark, violent and carnivorous. They learn what is necessary to survive.

This world is unknown to most of us. Hannigan knows it, though, and he says rehabilitation is a must or the prison system is lost.

He estimates 25 to 30 percent of the prison population is hopeless. These are the psychopathic personalities, men and women void of conscience. They need to stay locked up.

But there is the remaining 75 percent. They must be helped.

That's why his prison is the only one in the state baking its own bread, saving \$30,000 and teaching men a trade. That's why he has an open-door policy, available to all any time.

That's why he was honored with "Warden of the Year." Congratulations.

99

Date: Mon. 4-12-99

- |                            |                            |                            |
|----------------------------|----------------------------|----------------------------|
| ( ) Topeka Capital Journal | ( ) Hays Daily News        | ( ) Manhattan Mercury      |
| ( ) Wichita Eagle          | (●) Hutchinson News        | ( ) Olathe Daily News      |
| ( ) Kansas City Star       | ( ) Iola Register          | ( ) Parsons Sun            |
| ( ) Chanute Tribune        | ( ) Johnson County Sun     | ( ) Pittsburg Morning Sun  |
| ( ) Dodge City Daily Globe | ( ) Kansas City Kansan     | ( ) Salina Journal         |
| ( ) Emporia Gazette        | ( ) Lawrence Journal World | ( ) Winfield Daily Courier |
| ( ) Garden City Telegram   |                            |                            |

**EDITORIALS**

**A public issue**

Congratulations to Mike and Cindy O'Neal on their marriage Friday in Topeka.

Mike O'Neal, a Republican representative from Hutchinson, chairs the House Judiciary Committee. His bride, the former Cindy Wulfkuhle, worked during the just concluded session as secretary for the same legislative committee.

The couple planned their wedding for months in advance, and thanks to O'Neal's determined attempts to have the Legislature alter its nepotism rule, those plans became a public issue.

So far, legislative leaders have kept the nepotism rule in place.

Last summer, O'Neal asked the Legislative Coordinating Committee to amend the House nepotism rule

to allow Wulfkuhle to continue as his secretary once the couple was married.

The committee eventually declined, but not until two legislators, Sen. Dick Bond and former Rep. Tim Shallenburger, attempted to tailor the rule specifically for O'Neal.

Legislative leaders said they might consider O'Neal's request again this summer so Mrs. O'Neal can keep her job when legislators return in January 2000.

Congratulations to the newlyweds, but O'Neal should make his wedding day a truly memorable event. As a present to his constituents, O'Neal should drop his nepotism request and play by the rules.

Date:

Shew 6-17-99

- |   |                                     |   |                          |   |
|---|-------------------------------------|---|--------------------------|---|
| <input type="checkbox"/> Topeka Capital Journal | <input type="checkbox"/>            | <input type="checkbox"/> Hays Daily News        | <input type="checkbox"/> | <input type="checkbox"/> Manhattan Mercury      |
| <input type="checkbox"/> Wichita Eagle          | <input type="checkbox"/>            | <input type="checkbox"/> Hutchinson News        | <input type="checkbox"/> | <input type="checkbox"/> Olathe Daily News      |
| <input type="checkbox"/> Kansas City Star       | <input type="checkbox"/>            | <input type="checkbox"/> Iola Register          | <input type="checkbox"/> | <input type="checkbox"/> Parsons Sun            |
| <input type="checkbox"/> Chanute Tribune        | <input type="checkbox"/>            | <input type="checkbox"/> Johnson County Sun     | <input type="checkbox"/> | <input type="checkbox"/> Pittsburg Morning Sun  |
| <input type="checkbox"/> Dodge City Daily Globe | <input type="checkbox"/>            | <input type="checkbox"/> Kansas City Kansan     | <input type="checkbox"/> | <input type="checkbox"/> Salina Journal         |
| <input type="checkbox"/> Emporia Gazette        | <input checked="" type="checkbox"/> | <input type="checkbox"/> Lawrence Journal World | <input type="checkbox"/> | <input type="checkbox"/> Winfield Daily Courier |

# Council alters anti-nepotism policy for Hutchinson lawmaker, his wife

TOPEKA (AP) — The Legislative Coordinating Council adopted Wednesday an amendment to its anti-nepotism policy that allows Cindy O'Neal to continue working as legislative secretary to her new husband, Rep. Mike O'Neal, R-Hutchinson.

The amendment exempts from the policy any employee who was working for the Legislature prior to Nov. 4, 1991, the date the policy was adopted originally.

Otherwise, the policy prohibits employment of any member of their immediate families by legislators or legislative employees, if

that person would be supervised by a relative.

O'Neal, who married Cindy Wulfkuhle this spring, had asked the LCC last September to alter its policy. A tie vote in an LCC subcommittee blocked adoption of the change at a meeting in November.

O'Neal had asked to have the nepotism policy amended if it would prevent his future wife from continuing in her job.

O'Neal is chairman of the House Judiciary Committee, and his wife has worked as his secretary for several years. She

worked for the Legislature before the policy was adopted 7½ years ago.

Two Democrats, Sen. Anthony Hensley, Topeka, and former Rep. Tom Sawyer, Wichita, blocked the amendment last fall. Hensley said at the time, "A nepotism policy is in place, and I think it should remain. I don't feel like we should make an exception."

Hensley and Rep. Jim Garner, D-Coffeyville, who replaced Sawyer as House minority leader, voted against the change on Wednesday, but the five Republicans on the LCC approved it.

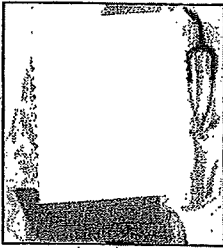
Date: \_\_\_\_\_

*Thursday* 3-22-07

- |                            |                               |                            |
|----------------------------|-------------------------------|----------------------------|
| ( ) Topeka Capital Journal | ( ) Hays Daily News           | ( ) Leavenworth Times      |
| ( ) Wichita Eagle          | ( ) Hutchinson News           | ( ) Manhattan Mercury      |
| ( ) Kansas City Star       | ( ) Iola Register             | ( ) Olathe Daily News      |
| ( ) Chanute Tribune        | ( ) Johnson County Sun        | ( ) Pittsburg Morning Sun  |
| ( ) Dodge City Daily Globe | ( ) Junction City Daily Union | ( ) Salina Journal         |
| ( ) Emporia Gazette        | ( ) Kansas City Kansan        | ( ) Winfield Daily Courier |
| ( ) Garden City Telegram   | ( ) Lawrence Journal World    |                            |

## READER VIEWS

### Why give doctors special treatment?



Kansas Republicans should know that the medical and insurance industry is trying to get a bill passed in the Kansas

Legislature that would excuse health care providers from being accountable for acts of consumer fraud and deception under the Kansas Consumer Protection Act. The bill already has passed the House, and I was startled to learn how this came about.

Several weeks ago the Kansas Supreme Court ruled that the Consumer Protection Act applies to doctors, same as everybody else. So the medical and insurance industry got a bill to the House Judiciary Committee to excuse health care providers from the consequences of the Consumer Protection Act. It seems that committee is chaired by Rep. Mike O'Neal, R-Hutchinson, an attorney who makes a living defending doctors who have been sued for medical malpractice.

I have never been much involved in politics, and shame on me. This shows me what can happen when you have a combination of special interest lobbies, special interest legislators who serve them, and legislators who make do with doing what they are told. This bill is being debated in the Kansas Senate, and it is our last chance to demand that the health care industry be held to the same standards as the rest of us.

SUSAN SCHRAG  
Peck

bility to stand up and speak for all people.

SUSAN MANDELBAUM  
Wichita

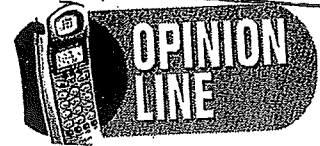
### That's what we get

The article "Statehouse restoration costs frustrate senators" (March 21 Local & State) sounded very similar to our situation in Wichita. It's funny that some in the Legislature are frustrated with rising costs and extended deadlines and their inability to do anything to change the situation.

Sounds very much like an arena project that has a mind of its own: rising costs, uncertainty in the scope of the final project, and frustration by many of us who want to do something to change the direction but can't.

Sorry, folks — that's what you get with these "pig in a poke" projects that grow and grow and grow.

LARRY HOLZMAN  
Wichita



I'm not a gambler, but I think it's high time the Legislature approved a gaming bill authorizing casinos in Dodge City and Wichita. Let the people in those communities decide whether they want to allow gambling.

Now that the Kansas Legislature has declared English the official language of Kansas, can we finally not have to press 1 for English when we call a public school?

Many states are restricting mercury, acid rain and smog from new and old coal-fired power plants. Kansas, on the other hand, welcomes the smoke, changed acidity of farmland and sports fisheries, and competition for scarce water.

Date: Tues. 7-20-99

- |                            |                            |                            |
|----------------------------|----------------------------|----------------------------|
| ( ) Topeka Capital Journal | ( ) Hays Daily News        | ( ) Manhattan Mercury      |
| ( ) Wichita Eagle          | ( ) Hutchinson News        | ( ) Olathe Daily News      |
| ( ) Kansas City Star       | ( ) Iola Register          | ( ) Parsons Sun            |
| ( ) Chanute Tribune        | ( ) Johnson County Sun     | ( ) Pittsburg Morning Sun  |
| ( ) Dodge City Daily Globe | ( ) Kansas City Kansan     | ( ) Salina Journal         |
| ( ) Emporia Gazette        | ( ) Lawrence Journal World | ( ) Winfield Daily Courier |
| ( ) Garden City Telegram   |                            |                            |

# OPINION

## EDITORIALS

### Part-time responsibility

One Hutchinson representative treats his part-time job in the Kansas Legislature as a part-time responsibility, even during the legislative session.

Rep. Mike O'Neal missed 52 recorded votes on 10 separate days during the 1999 session.

O'Neal offers no explanation for his absences during 13 percent of the lower chamber's recorded votes. But he should.

He should explain to voters concerned about government ethics why he failed to vote Feb. 16 on a resolution that clarified when the House can reprimand, censure or expel members.

He should tell citizens worried about children's issues why he missed the chance to vote, on March 22, on a bill relating to health insurance for Kansas children and, on April 9, on a bill pertaining to special education services for students.

O'Neal should detail what was more important on April 10 than voting on a bill changing property tax exemptions or a resolution urging the federal government not to impose trade sanctions that affect U.S. farm exports.

The same day, the House counted him absent and not voting on a bill

that amended a series of existing state laws. O'Neal served on the conference committee recommending the amendments. While the pattern of absenteeism worries voters, that sort of missing-in-action at a critical juncture also wears thin with fellow legislators.

On May 1, he missed votes on several bills, including one regarding Department of Corrections staffing levels and another one revising driving-under-the-influence laws.

On May 2, O'Neal again missed a series of votes, including one bill calling for legislative and congressional redistricting and another bill transferring property from the Department of Social and Rehabilitation Services to the corrections department and other government agencies.

O'Neal, an attorney, missed 103 roll-call votes (24 percent of the total) during the 1998 session. During last fall's campaign, he blamed his absences on a time-consuming federal court case. He also promised voters that his absenteeism would not become an issue again.

An analysis of his 1999 legislative voting record shows that the absenteeism continued.

Rep. Mike O'Neal should explain what happened.



Date: \_\_\_\_\_

*Shuss*, 4-16-09

- ( ) Topeka Capital Journal
- ( ) Wichita Eagle
- ( ) Kansas City Star
- ( ) Chanute Tribune
- ( ) Dodge City Daily Globe
- ( ) Emporia Gazette
- ( ) Garden City Telegram

- ( ) Hays Daily News
- ( ) Hutchinson News
- ( ) Iola Register
- ( ) Johnson County Sun
- ( ) Junction City Daily Union
- ( ) Kansas City Kansan
- ( ) Lawrence Journal World

- ( ) Leavenworth Times
- ( ) Manhattan Mercury
- ( ) Olathe Daily News
- ( ) Pittsburg Morning Sun
- ( ) Salina Journal
- ( ) Winfield Daily Courier

# Speaker faces nepotism inquiry

By Scott Rothschild

srothschild@ljworld.com

TOPEKA — When state Rep. Mike O'Neal, R-Hutchinson, was elected speaker of the House earlier this year, his wife also changed jobs.

Cindy O'Neal had been secretary of the House Judiciary Committee, which her husband chaired.

But when Mike O'Neal got a promotion, Cindy O'Neal was hired as a House Republican Caucus liaison at \$27,000 per year.

O'Neal said he had nothing to do with his wife getting the job.

On Wednesday, the Kansas Governmental Ethics Commission announced it was investigating a complaint filed by a Democratic legislator that the speaker violated the state's nepotism statute.

The decision came after a closed-door session in which the commission heard from a three-member subcommittee of the commission, which had reviewed the complaint.

The complaint by state Rep. Marti Crow of Leavenworth states that Speaker O'Neal violated the nepotism statute "by advocating or causing the transfer of employment as well as participating in an action relating to the employment of his wife, Cindy O'Neal. This is a clear violation of Kansas laws regarding nepotism."

Speaker O'Neal denied any wrongdoing.

O'Neal said his wife was hired by Peter Freund, who is chief of staff for House Majority Leader Ray Merrick, R-Stilwell.

O'Neal said he had nothing to do with the hiring and has no supervisory authority over her. He said he obtained legal opinions that Freund's hiring of Cindy O'Neal didn't violate the law.

"I didn't do anything wrong," he said. "I have a clean conscience about it, so does Cindy and so does the majority leader's office."

Cindy O'Neal has worked for the Legislature for the past 21 sessions.

The full Ethics Commission will conduct a public hearing on the dispute on May 20. If the commission determines that O'Neal violated the nepotism law, he could face a fine of up to \$5,000.

— Statehouse reporter Scott Rothschild can be reached at 785-354-4222 or 785-423-0668.

Date: \_\_\_\_\_

Wed 5-6-09

- |                            |                               |                            |
|----------------------------|-------------------------------|----------------------------|
| ( ) Topeka Capital Journal | ( ) Hays Daily News           | ( ) Leavenworth Times      |
| ( ) Wichita Eagle          | ( ) Hutchinson News           | ( ) Manhattan Mercury      |
| ( ) Kansas City Star       | ( ) Iola Register             | ( ) Olathe Daily News      |
| ( ) Chanute Tribune        | ( ) Johnson County Sun        | ( ) Pittsburg Morning Sun  |
| ( ) Dodge City Daily Globe | ( ) Junction City Daily Union | ( ) Salina Journal         |
| ( ) Emporia Gazette        | ( ) Kansas City Kansas        | ( ) Winfield Daily Courier |
| ( ) Garden City Telegram   | ( ) Lawrence Journal World    |                            |

# Leaders who wanted pay cuts for others were generous with own staffs

By Scott Rothschild  
 srothschild@ljworld.com

TOPEKA -- Republican leaders who have pushed for cuts in state employee pay have been generous paying their own staffs, according to state payroll records.

For example, Brent Haden, chief of staff to House Speaker Mike O'Neal, received a one-time payment of \$20,000 during his first week of employment in January, according to

the records. The payment is listed as a pay rate adjustment. Haden makes \$90,000 per year.

Last week, House Republican leaders proposed state employee furloughs, but then backed off that and instead pushed for a 5 percent pay cut for all state employees. That was later abandoned under a firestorm of criticism.

But state employees still may face further damage to their wallets as lawmakers work to fix a \$328 million deficit. A Senate plan would require that \$26 million be cut from state personnel costs.

Peter Freund, chief of staff to House Majority Leader Ray Merrick, R-Stilwell, makes \$73,000 per year. He has received one-time payments, listed as pay rate adjustments, of \$2,600, \$7,000 and \$2,308 in 2006, 2007 and last December, respectively. In September 2007 he left state employment briefly and his final paycheck was for \$16,081,

which may include vacation leave, according to state records.

Ryan Gilliland, chief of staff to House Speaker Pro Tem Arlen Siegfried, R-Olathe, received a one-time pay rate adjustment of \$5,000 in December. He makes \$48,000 a year.

Wade Hapgood, media and communications director for the House Republican Caucus staff, makes \$50,466 per year. He received a one-time pay rate adjustment of \$2,548 in December.

The pay information for the highest-ranking House GOP leadership staff was obtained through a Kansas Open Records request by the Lawrence Journal-World.

When asked to respond to the information, Haden said the House GOP leadership would have no comment.

— Statehouse reporter Scott Rothschild can be reached at 785-354-4222 or 785-423-0668.

STATE OF KANSAS  
HOUSE OF REPRESENTATIVES



MICHAEL R. (MIKE) O'NEAL  
SPEAKER

March 10, 2010

Mr. Jeffrey Russell  
Director, Legislative Administrative Services  
State Capitol Bldg.  
5<sup>th</sup> Floor, Rm 551S  
Topeka, Kansas 66612

Dear Jeff:

As a follow up to our recent phone conversation, this is to confirm that the House plans to address the issue of Legislative Officer staff salary reductions in the 2010 portion of the upcoming mega bill. It is our intention to reverse the Neufeld amendment to the extent that it calls for reductions in staff salary, as this is inconsistent with salary reductions in other branches.

Accordingly, please do not make reductions in non-titled legislative staff salaries (non-statutory staff of Legislative Officers) until we have addressed this issue in the budget. If it is not reversed in the budget, there will be sufficient pay periods before the end of the fiscal year to make the required reductions.

If you have any questions, please feel free to contact me.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read "Mike O'Neal".

Michael R. O'Neal  
Speaker, House of Representatives

cc: All House and Senate Leadership

TOPEKA ADDRESS

STATE CAPITOL BLDG., SUITE 370-W  
TOPEKA, KS 66612  
785-296-2302  
e-mail: [mike.oneal@house.ks.gov](mailto:mike.oneal@house.ks.gov)

104TH DISTRICT

HUTCHINSON/NORTHEAST RENO COUNTY  
website: [reoneal.com](http://reoneal.com)

HUTCHINSON ADDRESS

BOX 2977  
HUTCHINSON, KS 67504  
620-662-0537  
FAX: 620-669-9426  
e-mail: [mike@gh-hutch.com](mailto:mike@gh-hutch.com)

2-13

# Kansas House Democratic Leadership

**Paul Davis**  
DEMOCRATIC LEADER



**Jim Ward**  
ASSISTANT LEADER

**Barbara Ballard**  
CAUCUS CHAIR

**Marti Crow**  
AGENDA CHAIR

**Eber Phelps**  
DEMOCRATIC WHIP

**Cindy Neighbor**  
POLICY CHAIR

March 12, 2010

Ms. Susan Kanarr  
Chief Clerk  
Kansas House of Representatives  
300 SW 10<sup>th</sup> Avenue  
Topeka, KS 66612

Dear Ms. Kanarr:

House Speaker Michael R. O'Neal is engaged in a private lawsuit against the state on behalf of special interest groups who have ongoing business before the public body that he both serves in and leads. Pursuant to Article 49, Rule 4901, his behavior and actions are grounds for a formal complaint of misconduct. This letter serves as said complaint and as a formal request for further investigation. Troubling actions leading to this point are detailed on the following pages and verified by attached documents.

This is the only public forum available to facilitate a genuine discussion and investigation into the Speaker's behavior and actions. The Speaker of the House commands unyielding power in all matters before the Kansas House of Representatives. He is the last word on administrative issues. He determines standing committees and has the authority to both appoint and replace members and chairs. He has enormous influence over committee agendas. Bills passed out of committee are only debated and voted on by the full House if the Speaker allows it. An attempt to question his conduct through a process that he controls would be unfair and futile.

Special interest groups spend thousands of dollars every session to advocate for public policy that helps their cause and to fight policies that hurt them. Every legislator interacts with lobbyists, but there are certain, necessary boundaries on those relationships, both in and out of the Capitol. All legislators- especially the Speaker of the House- have an inherent responsibility to avoid the appearance of undue influence and impropriety. This is clearly ignored when the leader of the House collects a private paycheck from special interest groups to reverse a legislative appropriation. Ignoring this conduct condones it, and this is not the way we should be doing business in Kansas government.

Article 49 provides that a member may be reprimanded, censured or expelled for any "misconduct." Misconduct is not defined in House Rules, but the American Heritage Dictionary defines it as "behavior not conforming to prevailing standards or laws; impropriety; immorality. Dishonest or bad management, especially by persons entrusted or engaged to act on another's behalf. Malfeasance, especially by public officials." We strongly believe that Speaker O'Neal's behavior and actions fit this definition. We all have professional obligations in addition to our part-time legislative duties, but we give up some opportunities in our professions when we take an oath of public office. We must sometimes abstain from business opportunities due to their

Attachment 3  
HSIC 3-18-10


impact on our roles as public servants. If we don't, we risk poisoning the legislative process with cronyism, corruption, and backroom deals.


One incident in recent history sets an applicable precedent for this public discussion. In 2006, then Rep. O'Neal chaired the investigation of Senate President Stephen Morris after he engaged in a private conversation with a Supreme Court justice amid the school finance lawsuit. Although Senator Morris violated no statute, Rep. O'Neal asserted that the investigation was necessary "to determine whether the integrity of the legislative process was compromised in any way." Rep. O'Neal went on to argue that "those who have to vote on school finance have to get a comfort level about the integrity of the system beforehand." He stated that the investigation did not target a specific person but that it was to determine how that person's actions shaped events.


Members of Speaker O'Neal's chamber deserve the same assurance. The integrity of the budget process must be guaranteed before the House is forced to vote on a budget during the worst financial crisis since the Great Depression. The basis of this complaint is not the ability of special interests to sue the State of Kansas. The concern is the propriety of the Speaker's involvement in that case, how that involvement affects his public duties, and if this standard of conduct is acceptable.

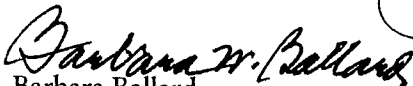
This is a request for an honest, open discussion about appropriate behavior and misconduct in the Kansas House of Representatives, and whether further action needs to be taken against Speaker O'Neal to protect the integrity of the body. We believe that further action is justified. If Speaker O'Neal continues on his current course, he sets a dangerous precedent for all future House Speakers and all future members of the Kansas Legislature.

Sincerely,

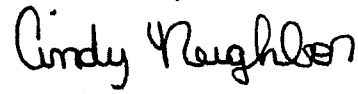
  
Paul Davis  
Democratic Leader

  
Jim Ward  
Assistant Leader

  
Eber Phelps  
Democratic Whip

  
Barbara Ballard  
Caucus Chair

  
Marti Crow  
Agenda Chair

  
Cindy Neighbor  
Policy Chair

cc: Speaker of the House Mike O'Neal, Speaker Pro Tem Arlen Siegfried

## The following actions provide the impetus for the complaint:

1. Representative O'Neal currently occupies the position of Speaker of the House of Representatives. In this capacity, Representative O'Neal serves as the leader of the Legislative branch of government along with the Senate President. The Speaker's position is the most influential in the House of Representatives. The Speaker maintains the authority to create or eliminate all committees, to appoint all committee chairs and committee members, and to exercise his own preferences regarding legislation that will or will not be considered by the House body as a whole (Please see Exhibit A: Rules of the Kansas House of Representatives 2009-2010; Article 33, Rule 3302: Duties of the Speaker). Furthermore, upon Speaker O'Neal's election as Speaker, he advocated for a change in Rules of the Kansas House of Representatives Article 5, Rule 501(c) to grant lobbyists unprecedented access to the House chamber and, essentially, his office (Please see Exhibit B).
2. Representative O'Neal voted against Senate Substitute for House Bill 2373 on May 7, 2009, but did not record his opposition in the House Journal when the vote was cast (Please see Exhibit C: 2009 House Journal Page 713). The fact that his opposition was not recorded at this time and was only done when the Legislature convened for Sine Die on June 4, 2009 (Please see Exhibit D: 2009 House Journal Page 781) and the fact that Representative O'Neal has never stated his opposition to this practice of fee fund sweeps on the record before (despite it being an almost yearly occurrence since 2002) leads one to believe that the opposition was filed for the sole purpose of Representative O'Neal positioning himself to initiate this lawsuit.
3. On January 21, 2010, Representative O'Neal filed a lawsuit (Kansas Building Industry Workers Compensation Fund et al. v. State of Kansas, Case No. 10 C 83) with the Shawnee County District Court as the only attorney of record for seventeen plaintiffs who seek to declare the legislative action pertaining to the "fee fund sweeps" in Senate Substitute for House Bill 2373 unconstitutional and void (Please see Exhibit E: Petition for Case No. 10 C83).

On June 4, 2009, Representative O'Neal submitted a protest, as set forth in K.S.A. 46-233(c), in the House Journal relating to provisions of Senate Substitute for House Bill 2373. The provisions related to as Representative O'Neal described "legislatively-enacted fee fund sweeps" (Please see Exhibit D: 2009 House Journal Page 781).

4. Included in the list of plaintiffs are the Kansas Association of Realtors, Kansas Bankers Association, QC Holdings Companies and insurance funds for the Kansas Restaurant and Hospitality Association, Kansas Automobile Dealers Association and the Kansas Health Care Association. These organizations are some of the most powerful lobbying organizations in the State of Kansas. In 2009, these organizations spent a combined \$51,280.65 to lobby the Kansas Legislature and numerous pieces of legislation before the Legislature currently that they are working to support and oppose (Please see Exhibit F: Summary of Expenditures Reported by Registered Lobbyists from September, October, November and December 2009; TABLE IV: Total Lobbyist Expenditures for the Year 2009).
5. In an email sent by Representative O'Neal to members of the House Republican Caucus on February 9, 2010 (Please see Exhibit G: E-mail dated February 9, 2010 from Mike O'Neal, Subject: Fee Sweep Suit), Representative O'Neal asserted that the practice of "sweeping (fee) funds" was something that "I have been criticizing since back in 2001-2002". However, Representative O'Neal's voting record (Please see Exhibit H: Fee Sweeps supported by Rep. Mike O'Neal from 2002-2010) demonstrates

that he has voted for nearly 40 fee fund sweeps between 2002 and 2010. Included in his voting record is a sweep of \$7 million from one of the funds that he is now representing in this lawsuit .

6. Representative O'Neal defends his role in this lawsuit by citing compliance with K.S.A. 46-233(c) (Please see Exhibit I). This statute provides a framework for legislators who practice law and are representing a client who will be requesting that an act of the Legislature be declared unconstitutional. The statute requires the legislator to vote against the legislative action and state his or her objections and belief that the legislation is unconstitutional "on the record".
7. We, along with members of the news media, have requested that Representative O'Neal make public the details regarding his legal fee arrangement with his clients. To date, Representative O'Neal has refused to do so, citing that concealment it is protected by his attorney-client relationships with the 17 plaintiffs. The legal definition of contingent fee is "a fee arrangement in which the lawyer is paid out of any damages that are awarded." A letter dated January 20, 2010 from Barton County Counselor/Administrator Richard Barton (Please see Exhibit J) stated that Speaker O'Neal "is charging a fee based upon the proportion of each client's loss bears in relation to the total loss of all clients." If a contingent fee arrangement exists, O'Neal and his law firm, Gilliland & Hayes, P.A. would stand to earn approximately \$1.6 million if the lawsuit is successful (this figure is based on standard contingent fee rates, which is typically one-third of final amount recovered).

Speaker O'Neal has made statements repeatedly that he is charging an hourly rate only for his services in this lawsuit. If this is the case (which cannot be proved unless his contract is made public) the Speaker of the House is then receiving private compensation- during the legislative session- directly from lobbying organizations that have a great deal of business before the Legislature.

8. On February 22, 2010, members of the House Democratic Leadership formally requested Speaker O'Neal recuse himself and his law firm from the lawsuit in question in a letter delivered to his office personally (Please see Exhibit K). We outlined explicit reasons for this request, including:
  - The inability to reconcile his public role as Speaker of the House with his obligation as his special interest clients' private attorney;
  - The questionable timeline under which the lawsuit coalesced and the highly questionable reasoning Speaker O'Neal offered to justify past actions/votes;
  - Speaker O'Neal's refusal to make his fee contract with these special interests' clients public, leaving any of his own statements about the amount which he stands to earn complete speculation.
9. On March 3, 2010, Speaker O'Neal released a memo claiming that concerns of House Democratic Leadership were "disingenuous, baseless, unjustified, and unbecoming to members of the Kansas Legislature" (Please see Exhibit L). He clearly indicated that he has no intention of answering these questions or providing the information requested unless he is legally required to do so.

whether no action should be taken on the application. The committee on calendar and printing shall report to the House the decision of the committee on each application approved by the committee under this rule for the introduction of a House resolution or House concurrent resolution or issuance of a certificate of the House.

#### ARTICLE 33. MEMBER OFFICERS

**Rule 3301. Elected Member Officers.** The Speaker and the Speaker Pro Tem shall be members and shall be elected by the members of the House, except as otherwise provided in subsection (b) of Rule 3304.

**Rule 3302. Duties of the Speaker.** In addition to other powers and duties of the Speaker provided by the Rules of the House and by law, the Speaker shall have the powers and duties as follows:

- (a) To preserve order and decorum;
- (b) to decide all questions of order, subject to appeal to the House;
- (c) in the absence of the Speaker Pro Tem, to appoint any member to perform the duties of the chair for not more than two consecutive legislative days; and
- (d) to name a chairperson to preside when the House is in committee of the whole.

**Rule 3303. Speaker Pro Tem.** In the absence of the Speaker, the Speaker Pro Tem shall exercise the powers and duties of the Speaker.

**Rule 3304. Filling Certain Vacancies.** (a) When a vacancy occurs in the office of Speaker and the Legislature is adjourned to a date more than 60 days after the occurrence of the vacancy, the House of Representatives shall meet within 30 days and elect a member to fill the vacancy. The Speaker Pro Tem shall within 10 days of such occurrence issue a call for such meeting at a time not less than 10 days and not more than 20 days after the date of the call.

(b) When a vacancy occurs in the office of Speaker Pro Tem or Majority Leader of the House of Representatives, the Speaker shall appoint an acting Speaker Pro Tem or acting Majority Leader, to serve until the convening of the next session of the Legislature, at which time the vacancy shall be filled in the manner provided for the original election or selection of such officer.

(c) When a vacancy occurs in the office of Minority Leader of the House of Representatives and the Legislature is adjourned to a date less than 30 days after the occurrence of the vacancy, the Assistant Minority Leader shall become the acting Minority Leader to serve until the convening of the next session of the Legislature, at which time the vacancy shall be filled in the manner provided for the original selection of such officer. When a vacancy occurs in the office of the Minority Leader of the House and the Legislature is adjourned to a date 30 days or more after the occurrence of the vacancy, the Assistant Minority Leader shall within 10 days after such occurrence issue a call for a meeting of the members of the minority party at a time not less than 10 and not more



Journal by statement of the total number present, naming only the absentees.

ARTICLE 5. CONDUCT IN THE HOUSE CHAMBER

**Rule 501. Admission to Floor.** (a) During daily sessions, from the time of convening until adjournment to the following legislative day, only the following classes of persons shall be admitted to the floor of the House, the cloakrooms to the east of the house chamber and the hallway at the west of the house chamber: (1) Members of the Legislature; (2) officers and employees of the legislative branch who are properly identified; (3) persons having permits from the Speaker.

(b) No person who is an officer or employee of the executive or judicial branch of Kansas government or an employee of the federal government shall be admitted to the area of the chamber on which legislators' desks are located during the time the House of Representatives is in session, except as provided by resolution, nor shall any such person be on the floor of the House chamber during a call of the House. No person, other than a member, shall lean on the railings on the floor of the House chamber next to the area of the chamber on which legislators' desks are located during any time the House is on final action.

(c) No person registered with the Secretary of State as a lobbyist shall be on the floor of the House chamber during the part of the year that the Legislature is in session.

(d) The sergeant at arms shall remove all persons from the floor, except persons authorized under the Rules of the House or a House resolution.

(e) The provisions of this rule shall not be construed to prevent the right of access (through the west hallway) by persons going directly to or returning from the offices of the Speaker and the Majority Leader.

**Rule 502. Food and Drink.** Members may have food or drink, or both, on their desks in the House chamber only when the member is present at the member's desk.

**Rule 503. Galleries.** Visitors shall be allowed in one or both galleries of the House in accordance with directions to the sergeant at arms from the Speaker. Except for security personnel authorized by the Speaker, the use of telephones and the making of telephone calls in the galleries of the House are prohibited.

**Rule 504. Placing Material on Member's Desks.** No items or material shall be placed upon the desk of any member of the House unless any such item or material bears the signature and printed name of the member responsible for its distribution. This Rule 504 shall not apply to items or material provided by legislative staff.

**Rule 505. Photographic Record of Vote.** No photographic or similar record shall be made of the vote of any member upon any measure upon which a division of the assembly has been called.

**Rule 506. Wireless Electronic Telecommunications Devices.** Except for security personnel authorized by the Speaker, the use of wireless

Journal by statement of the total number present, naming only the absentees.

#### ARTICLE 5. CONDUCT IN THE HOUSE CHAMBER

**Rule 501. Admission to Floor.** (a) During daily sessions, from the time of convening until adjournment to the following legislative day, only the following classes of persons shall be admitted to the floor of the House, the cloakrooms to the east of the house chamber and the hallway at the west of the house chamber: (1) Members of the Legislature; (2) officers and employees of the legislative branch who are properly identified; (3) persons having permits from the Speaker.

(b) No person who is an officer or employee of the executive or judicial branch of Kansas government or an employee of the federal government shall be admitted to the area of the chamber on which legislators' desks are located during the time the House of Representatives is in session, except as provided by resolution, nor shall any such person be on the floor of the House chamber during a call of the House. No person, other than a member, shall lean on the railings on the floor of the House chamber next to the area of the chamber on which legislators' desks are located during any time the House is on final action.

(c) No person registered with the Secretary of State as a lobbyist shall be on the floor of the House chamber 15 minutes before the time of convening the daily session until 15 minutes after adjournment to the following legislative day.

(d) The sergeant at arms shall remove all persons from the floor, except persons authorized under the Rules of the House or a House resolution.

(e) The provisions of this rule shall not be construed to prevent the right of access (through the west hallway) by persons going directly to or returning from the offices of the Speaker and the Majority Leader.

**Rule 502. Food and Drink.** Members may have food or drink, or both, on their desks in the House chamber only when the member is present at the member's desk.

**Rule 503. Galleries.** Visitors shall be allowed in one or both galleries of the House in accordance with directions to the sergeant at arms from the Speaker. Except for security personnel authorized by the Speaker, the use of telephones and the making of telephone calls in the galleries of the House are prohibited.

**Rule 504. Placing Material on Member's Desks.** No items or material shall be placed upon the desk of any member of the House unless any such item or material bears the signature and printed name of the member responsible for its distribution. This Rule 504 shall not apply to items or material provided by legislative staff.

**Rule 505. Photographic Record of Vote.** No photographic or similar record shall be made of the vote of any member upon any measure upon which a division of the assembly has been called.

Quigley, Rardin, Schwab, Siegfried, Slattery, Spalding, Talia, K. Wolf, Worley and Yoder, as follows, was introduced and adopted:

HOUSE RESOLUTION No. 6032—

A RESOLUTION congratulating the Johnson County Community College women's half-marathon team.

WHEREAS, On November 22, 2008, the Johnson County Community College women captured the National Junior College Athletic Association (NJCAA) Half-Marathon National Championship; and

WHEREAS, On the roads and trails that wove through Shawnee Mission Park and Mill Creek Streamway Park, the JCCC women's team battled wind-chill temperatures in the high teens and a field of 185 runners representing 27 teams to capture the women's championship; and

WHEREAS, In winning this year's half-marathon championship, the Johnson County women's team won their fourth team title in the six-year history of the event; and

WHEREAS, Johnson County had two of the top six runners in the final standings with sophomore Temer Yimer placing third with a time of 1:25:08 and sophomore Francis Gipson placing fourth with a time of 1:27:10; and

WHEREAS, The history of success for the Johnson County Community College women's team is particularly impressive considering that training and conditioning for long-distance running competitions like a half-marathon is grueling, requiring incredible levels of dedication and hard-work. Now, therefore,

*Be it resolved by the House of Representatives of the State of Kansas:* That we congratulate and commend the Johnson County Community College women's half-marathon team for winning its fourth NJCAA Half-Marathon National Championship in six years and that we wish them all continued success; and

*Be it further resolved:* That the Chief Clerk of the House of Representatives be directed to provide three enrolled copies of this resolution to Representative Terrie Huntington.

There being no objection, the following remarks of Rep. Huntington are spread upon the journal:

Besides celebrating the 40th Anniversary, a field of 185 runners representing 27 teams began the rigorous trek through the parks and trails in Johnson County for the Half Marathon Championships in Shawnee. JCCC hosted and won the event, as they did in 2003, 2005, and 2006.

Two of the top six runners in the final standings included Sophomore Temer Yimer who placed third, followed by Francis Gipson.

I would like to introduce the team members: Francis Gipson, Temer Yimer, Heather Kochie, Emily Crews, Sarah Stark, Kayla Harris, Haley Snow, Roxanna Cabrera and Renae Dupree. Also, accompanying them today are Carl Heinrich, Director of Athletics; Mike Bloemker, coach of Cross Country/Track and Field; and Brian Batliner, assistant coach.

Please join me in recognizing the Women's Half Marathon team.

**MOTIONS TO CONCUR AND NONCONCUR**

On motion of Rep. Yoder that the House nonconcur in Senate amendments to **S. Sub. for HB 2373** and that a conference committee be appointed, Rep. Aurand offered a substitute motion to concur.

The substitute motion prevailed and the House concurred in Senate amendments to **S. Sub. for HB 2373**, An act making and concerning appropriations for the fiscal years ending June 30, 2009, June 30, 2010, June 30, 2011, June 30, 2012, June 30, 2013, and June 30, 2014, for state agencies; authorizing certain transfers, capital improvement projects and fees, imposing certain restrictions and limitations, and directing or authorizing certain receipts, disbursements and acts incidental to the foregoing; amending K.S.A. 2008 Supp. 12-5256, as amended by section 136 of 2009 Senate Substitute for House Bill No. 2354, 76-7,107, as amended by section 139 of 2009 Senate Substitute for House Bill No. 2354, 79-2978, as amended by section 88 of 2009 House Substitute for Substitute for Senate Bill No. 23, 79-2979, as amended by section 89 of 2009 House Substitute for Substitute for Senate Bill No. 23, 79-3425i, as amended by section 144 of 2009 Senate Substitute for House Bill No. 2354,

79-34,156, as amended by section 91 of 2009 House Substitute for Substitute for Senate Bill No. 23, and 79-4801, as amended by section 145 of 2009 Senate Substitute for House Bill No. 2354, and repealing the existing sections; also repealing section 102 of 2009 Senate Substitute for House Bill No. 2354, 79-2978, as amended by section 142 of 2009 Senate Substitute for House Bill No. 2354, and 79-2979, as amended by section 143 of 2009 Senate Substitute for House Bill No. 2354.

Call of the House was demanded.

On roll call, the vote was: Yeas 64; Nays 60; Present but not voting: 0; Absent or not voting: 1.

Yeas: Ballard, Benlon, Brookens, T. Brown, Burroughs, Carlin, Colloton, Craft, Crow, Davis, Dillmore, Feuerborn, Finney, Flaharty, Frownfelter, Furtado, Garcia, D. Gatewood, S. Gatewood, Goyle, Grant, Hawk, Henderson, Henry, Hill, Huntington, Johnson, Kuetner, Lane, Light, Loganbill, Long, Lukert, Mah, Maloney, McCray-Miller, Menghini, Moxley, Navinsky, Neighbor, Palmer, Pauls, Peterson, Phelps, Pottorff, Proehl, Quigley, Roth, Ruiz, Sawyer, Slattery, Sloan, Spalding, Svaty, Swenson, Talia, Tietze, Trimmer, Ward, Wetta, Williams, Winn, K. Wolf, Worley.

Nays: Aurand, Bethell, Bowers, A. Brown, Brunk, Burgess, Carlson, Crum, DeGraaf, Donohoe, Faber, Fund, George, Goico, Gordon, Grange, Hayzlett, Hermanson, Hineman, C. Holmes, M. Holmes, Horst, Huebert, Jack, Kelley, Kerschen, Kiegerl, King, Kinzer, Kleeb, Knox, Landwehr, Mast, McLeland, Merrick, Morrison, Myers, Neufeld, O'Brien, O'Neal, Olson, Otto, Patton, Peck, Powell, Prescott, Rhoades, Schroeder, Schwab, Schwartz, Seiwert, Shultz, Siegfried, Swanson, Tafanelli, Vickrey, Watkins, Whitham, B. Wolf, Yoder.

Present but not voting: None.

Absent or not voting: Rardin.

#### EXPLANATIONS OF VOTE

MR. SPEAKER: I vote no on **S. Sub. for HB 2373**. I have great concern when the House abdicates its responsibility to the Senate. Although I agree with some of the general area funding positions in areas such as education, social services, etc., the fact that I didn't have the chance to closely study the entire bill and determine points of agreement and disagreement with the bill is disquieting. Because of that fact, I feel it is inappropriate for me to support a bill which has the potential of negatively affecting many Kansans and most likely has mistakes which would have been corrected by the close scrutiny of a conference committee.—DEENA HORST

MR. SPEAKER: As an elected Representative, I am troubled that we would pass a bill without fully understanding the consequences. By not debating, or even reading the bill, we have passed something that contains many items that are damaging to the state in the long-term. By subverting the normal legislative process and forgoing any Representative involvement, we are failing our constituents. This was not the only way we could protect our schools and draft a responsible budget. For that reason, I vote "No" on **S. Sub. for HB 2373**.—WILLIE PRESCOTT, DAN KERSCHEN

MR. SPEAKER: I vote no on **S. Sub. for HB 2373**. The bill doesn't keep promises made to local governments. It doesn't balance the budget but leaves a bigger hole to fill with tax increases that will only burden thousands of Kansans who are struggling to make ends meet.

I take my job very seriously. Part of my responsibility is to make sure the voices of my constituents are heard on every issue that comes before us. That is done through careful study and debate. I vote no because this motion silences the House and my constituents.—SHARON SCHWARTZ

MR. SPEAKER: I vote no on **S. Sub. for HB 2373**. I am troubled that we would pass a bill without any debate and not fully understanding the consequences. There are many items that are damaging to the state and we have abdicated our duty to protect the long-term good of our schools and taxpayers by not drafting a responsible budget. In addition, I voted no because the omnibus budget bill:

- Eliminates critical legal and rehabilitation programs
- Assumes imaginary gaming revenue

- Denies cities and counties the tax slider revenue forcing local governments to raise taxes.
- Denied adequate funding for the physically and developmentally disabled and mental facilities.—MARVIN KLEEB

#### CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on Senate amendments to **HB 2060**, submits the following report:

Your committee on conference agrees to disagree and recommends that a new conference committee be appointed;

And your committee on conference recommends the adoption of this report.

THOMAS C. OWENS  
DEREK SCHMIDT  
*Conferees on part of Senate*

PAT COLLTON  
JOE PATTON  
MELODY MCCRAY-MILLER  
*Conferees on part of House*

On motion of Rep. Collton, the conference committee report on **HB 2060** was adopted. Speaker O'Neal thereupon appointed Reps. Collton, Patton and McCray-Miller as fourth conferees on the part of the House.

#### INTRODUCTION OF ORIGINAL MOTIONS

On motion of Rep. Merrick, pursuant to subsection (k) of Joint Rule 4 of the Joint Rules of the Senate and House of Representatives, the rules were suspended for the purpose of considering **S. Sub. for HB 2267**.

#### CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on Senate amendments to **HB 2267**, submits the following report:

The House accedes to all Senate amendments to the bill, and your committee on conference further agrees to amend the bill, as printed with Senate Committee of the Whole amendments, as follows:

On page 1, by striking all in lines 35 through 41 and by inserting the following:

“(c) On July 1, 2009, the governor shall appoint the membership of the task force. Any person serving as a member of the task force on June 30, 2009, may be reappointed. The terms of members appointed or reappointed to the task force shall expire on July 1, 2011. Vacancies occurring before the expiration of a term shall be filled in the same manner as the original appointment.”;

On page 4, in line 14, by striking “information” and inserting “certification”;

And your committee on conference recommends the adoption of this report.

PETE BRUNGARDT  
ROGER P. REITZ  
OLETHA FAUST-GOUDEAU  
*Conferees on part of Senate*

LANCE KINZER  
JEFF WHITHAM  
JANICE L. PAULS  
*Conferees on part of House*

On motion of Rep. Kinzer, the conference committee report on **S. Sub. for HB 2267** was adopted.

On roll call, the vote was: Yeas 121; Nays 2; Present but not voting: 0; Absent or not voting: 2.

"Regardless of one's views on whether abortion should be allowed in this country, hopefully we can all agree that we should make every effort to prevent unplanned pregnancies. Access to affordable family planning services and contraceptives is critical if we are to continue reducing the number of abortions that occur in this state.

"This section would prohibit distribution of Title X moneys to private family planning providers unless they are either a hospital or provide comprehensive primary and preventative care in addition to family planning services. This proviso would prevent funding for two facilities of other eligible family planning providers. These facilities do not perform abortions, and by law, Title X funding cannot be used for abortion services.

"Both of these facilities provide affordable access to contraceptives and family planning services for women who are significantly below the poverty level. These women are most at risk for unplanned pregnancies. The family planning services provided by these facilities help lower the likelihood of unplanned pregnancy, and thus reduce abortions. Eliminating funding for programs intended to reduce the number of unplanned pregnancies does nothing to help reduce abortions in Kansas.

"I am also concerned this proviso violates Title X of the Public Service Act. The facilities ineligible for funding under this proviso are, by law, eligible under Title X to receive the grants. The Public Service Act is clear that states are not permitted to refuse the award of Title X funding to entities that meet the statutory requirements for the grants. I therefore find it necessary to line-item veto this proviso."

MARK PARKINSON  
Governor

Dated: May 22, 2009

#### CONSIDERATION OF VETOED LINE ITEMS

The governor's line item objections to **S. Sub. for HB 2373** having been read (see this Journal, pp. 780-781), the time arrived for reconsideration of **S. Sub. for HB 2373**. An act making and concerning appropriations for the fiscal years ending June 30, 2009, June 30, 2010, June 30, 2011, June 30, 2012, June 30, 2013, and June 30, 2014, for state agencies; authorizing certain transfers, capital improvement projects and fees, imposing certain restrictions and limitations, and directing or authorizing certain receipts, disbursements and acts incidental to the foregoing; amending K.S.A. 2008 Supp. 12-5256, as amended by section 136 of 2009 Senate Substitute for House Bill No. 2354, 76-7,107, as amended by section 139 of 2009 Senate Substitute for House Bill No. 2354, 79-2978, as amended by section 88 of 2009 House Substitute for Substitute for Senate Bill No. 23, 79-2979, as amended by section 89 of 2009 House Substitute for Substitute for Senate Bill No. 23, 79-3425i, as amended by section 144 of 2009 Senate Substitute for House Bill No. 2354, 79-34,156, as amended by section 91 of 2009 House Substitute for Substitute for Senate Bill No. 23, and 79-4801, as amended by section 145 of 2009 Senate Substitute for House Bill No. 2354, and repealing the existing sections; also repealing section 102 of 2009 Senate Substitute for House Bill No. 2354, 79-2978, as amended by section 142 of 2009 Senate Substitute for House Bill No. 2354, and 79-2979, as amended by section 143 of 2009 Senate Substitute for House Bill No. 2354.

There was no motion to reconsider the line items. The chair ruled the line items had been reconsidered and the veto sustained.

#### PROTEST

Pursuant to the provisions of Article 2, Section 10 of the Kansas Constitution and K.S.A. 2008 Supp. 46-2339(c), I make formal written protest regarding the passage of those line items contained in 2009 **S. Sub. for HB 2373** (Omnibus Appropriations bill) which purport to cause the transfer of statutory fee funds to the State General Fund under the guise of reimbursing the SGF for "accounting, auditing, budgeting, legal, payroll, personnel and purchasing services and any other governmental services which are performed on behalf of the state agency by other state agencies which receive appropriations from the state general fund to provide such services."

Attention is directed to the holding and rationale of Kansas Attorney General Opinion No. 2002-45, where it was noted that "*if an assessment so exceeds the cost of regulation*

*that it is apparent the legislature is using it as a general revenue raising measure, the overage cannot stand on police power authority. If the assessment is in fact a revenue raising measure, it must be analyzed as such, which may include a determination as to whether it meets Commerce Clause and Equal Protection requirements, as well as any state constitutional requirements applicable to the type of tax it is. If an assessment cannot stand on either police power or taxing authority, it would have to be reimbursed..."*

It cannot be argued that the fee sweeps contained in **S. Sub. for HB 2373** serve the legitimate purpose of reimbursing the SGF for the reasonable and necessary expenses of providing the purported services. Indeed, it is common knowledge that the fee sweeps were and are for the sole purpose of providing sufficient revenue within the SGF to balance the budget for FY 2010. Sweeping statutory fee funds held in trust for the specific purposes outlined in their enabling legislation constitutes a taking for which affected parties are entitled to a remedy under the law. That remedy is reimbursement.

That it is common knowledge that revenue raising was the primary, if not sole motivation for the fee sweeps is illustrated by the Notices of Assessment that were recently sent out by the Kansas Insurance Department with regard to assessing Kansas businesses for the Workers' Compensation Fee Fund, one of the funds targeted for sweeps in **S. Sub. for HB 2373**. The Notice states: "**Action by the 2009 Kansas Legislature included a sweep of monies from the Workers' Compensation Fee Fund into the State General Fund. This action was part of the Legislature's proposal to remedy a revenue shortage in the State General Fund. This legislative sweep makes it necessary that the Kansas Insurance Department levy an assessment this year of 1.0 percent.**"

The effect of the fee sweeps will, like the Notice above implies, cause individuals and businesses required to pay the statutory fees to pay a second time for the same services/programs they paid for previously with funds that are now swept. This constitutes an unauthorized tax. This practice of fee sweeps has occurred in the past, prompting the above-referenced Attorney General Opinion. The time has come for the Executive Branch and Legislative Branch to cease and desist the practice of attempting to balance the State General Fund by a subterfuge that is neither legal nor ethical, and which amounts to an unauthorized tax increase on affected Kansas taxpayers.—MICHAEL R. "MIKE" O'NEAL

#### MESSAGE FROM THE SENATE

Announcing the Senate herewith transmits the veto message from the Governor on **H. Sub. for SB 51**. An act concerning local governments, relating to boundary issues, amending K.S.A. 12-519, 12-520b, 12-521, 12-531 and 12-532 and K.S.A. 2008 Supp. 12-520, 82a-612 and 82a-646 and repealing the existing sections, which was received on May 22, 2009, and was read before the Senate on June 4, 2009.

#### Message from the Governor

The state should not take action that limits the ability of cities to pursue developments that will lead to economic growth, especially during these difficult economic times. Cities in Kansas must have the flexibility to annex property that will allow growth and economic development. Planning for growth in a way that promotes the health, safety and public welfare of its citizens and neighbors also is a fundamental responsibility of cities.

I support the procedural safeguards for landowners whose property is annexed over their objection that are contained in **H. Sub. for SB 51**. I also support the provisions limiting a city's future ability to annex a narrow corridor of land to reach a non-contiguous tract of land, and the provisions dealing with rural water districts. I hope the Legislature will focus on these aspects of House Substitute for SB 51 during the next legislative session.

I am concerned that the provisions in **H. Sub. for SB 51** that prohibit a city from annexing more than 65 acres of land devoted to agricultural use may prevent cities from growing in ways that would greatly benefit the economy. I have confidence that the current requirement for a county commission to approve a city's proposed annexation of property in the unincorporated county provides a safeguard from unreasonable annexation attempts.

yir

GILLILAND & HAYES, P.A.  
20 West 2<sup>nd</sup> Street, 2<sup>nd</sup> Floor  
P.O. Box 2977  
Hutchinson, KS 67504-2977  
(620) 662-0537 - Phone  
(620) 669-9426 - Fax

FILED BY CLERK  
KS. DISTRICT COURT  
THIRD JUDICIAL DIST.  
TOPICK, KS

2010 JAN 21 P 1:01

**IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS**

KANSAS BUILDING INDUSTRY WORKERS )  
COMPENSATION FUND, )  
KANSAS WORKERS RISK COOPERATIVE FOR COUNTIES, )  
KHA WORKERS COMPENSATION FUND, INC., )  
KANSAS RESTAURANT AND HOSPITALITY )  
ASSOCIATION SELF-INSURANCE FUND, )  
KAHA INSURANCE GROUP, )  
KANSAS AUTOMOBILE DEALERS WORKERS )  
COMPENSATION FUND, )  
MIDWEST BUILDERS' CASUALTY MUTUAL COMPANY, )  
KANSAS MUNICIPAL INSURANCE TRUST, )  
KANSAS EASTERN REGION INSURANCE TRUST, )  
WICHITA AUTO DEALERS SELF INSURANCE FUND, )  
KANSAS TRUCKERS RISK MANAGEMENT GROUP, INC., )  
KANSAS HEALTH CARE ASSOCIATION WORKERS )  
COMPENSATION INSURANCE TRUST CORP., )  
KANSAS ASSOCIATION OF REALTORS®, )  
KANSAS BANKERS ASSOCIATION, )  
QC HOLDINGS COMPANIES, )  
GALT VENTURES OF KANSAS, L.L.C., )  
and K & N PETROLEUM, INC., )

Plaintiffs, )

v. )

Case No. 10C83

STATE OF KANSAS, DEPARTMENT OF ADMINISTRATION, )  
DIVISION OF ACCOUNTS AND REPORTS. )

Defendant. )

**PETITION**

COME NOW THE Plaintiffs by their attorneys, Gilliland & Hayes, P.A., and for their causes of action against Defendant State of Kansas allege and state as follows:

1. Plaintiffs bring this action on behalf of each of them and on behalf of those similarly situated. Plaintiffs are entities aggrieved by the conversion of statutory fee funds from

**EXHIBIT E**

3-13



the hereinafter identified segregated fee fund accounts into the State General Fund by virtue of legislative action in the 2009 Legislative Session pursuant to Senate substitute for HB 2373 (Chapter 144, 2009 Session Laws of Kansas).

2. Plaintiffs seek class status pursuant to K.S.A. 60-223 and petition the Court for declaratory relief pursuant to K.S.A. 60-1701 *et seq.*, injunctive relief pursuant to K.S.A. 60-901 *et seq.*, relief in *mandamus* pursuant to K.S.A. 60-801 *et seq.* and *quo warranto* pursuant to K.S.A. 60-1201 *et seq.* in the form of a finding that the provisions of 2009 Session Laws, Chapter 144 that contain fee sweeps are unconstitutional and an Order requiring return of the swept funds to their statutory accounts.
3. Service of Process on the Defendant is pursuant to K.S.A. 60-304(d) and may be effected by serving Kansas Attorney General, Steve Six, or any assistant attorney general, Memorial Hall, Second Floor, 120 SW 10<sup>th</sup> Avenue, Topeka, Kansas 66612.
4. This Court has subject matter jurisdiction over the parties and venue is proper in Shawnee County, Kansas.

#### **ALLEGATIONS COMMON TO ALL PLAINTIFFS**

5. In the Governor's budget message to the 2009 Kansas Legislature, Governor Sebelius announced that recent revenue estimates no longer supported approved fiscal year 2009 expenditures and there was a total revenue gap between expenditures and available resources for fiscal year 2010 of over \$900 million.
6. Governor Sebelius presented a revised budget for FY 2009 and a new proposed budget for FY 2010, which included recommendations for reduced expenditures and what were characterized as "changes to revenue."
7. The Governor's budget recommended reductions in expenditures in special revenue fund agencies and further recommended transferring balances and special revenue funds to the

State General Fund in an effort to balance the budget. Specifically, the Governor proposed sweeping \$29 million in Special Revenue Fund balances into the State General Fund in FY 2009 and another \$2.2 million in FY 2010.

8. The Governor's budget message indicated that the combined effect of reductions in expenditures and transfers of funds to the General Fund would resolve the revenue gap yielding a General Fund ending balance of \$58.3 million in fiscal year 2009 and a \$600,000 ending balance in fiscal year 2010.
9. The Governor's published recommended budget contained an itemized listing of her proposed revenue transfers, which were characterized as "cash sweeps." Included in the itemized list of proposed sweeps of fee funds into the General Fund was a transfer from the Workers Compensation Fund administered by the Kansas Insurance Department, a transfer from the Real Estate Fee Fund administered by the Kansas Real Estate Commission, a transfer from the Bank Commissioner Fee Fund administered by the Office of the State Bank Commissioner, and a transfer from the Conservation Fee Fund administered by the Kansas Corporation Commission.
10. Working off the Governor's proposed budget, the 2009 Kansas Legislature ultimately passed, and the Governor signed into law, Senate substitute for House Bill for 2373 (Chapter 144, 2009 Session Laws of Kansas).
11. The Governor's proposed sweeps into the State General Fund were reduced by a Senate floor amendment that had the effect of reducing the itemized list of fee fund sweeps by the uniform amount of 21.5%.
12. Another Senate floor amendment granted outright exemptions to a number of fee funds on the Governor's proposed fee fund sweep list.

13. HB 2373 was signed into law by the current Governor with the exception of three unrelated line item vetoes and became effective on publication in the Kansas Register June 11, 2009.
14. There is no legislative history or evidence of the reasons why some targeted funds were exempted while other funds were swept.
15. The House Appropriations Committee did not include the fee sweeps in its version of the Omnibus Budget Bill. Senate substitute for HB 2373 was sent to the Governor's desk when a substitute motion to concur in the House passed by a narrow margin. The Omnibus Budget Bill therefore was never sent to conference committee where differences between the House and Senate versions could be negotiated.
16. The Legislature adopted the bulk of the Governor's recommendations to sweep balances and special revenue funds into the State General Fund, and in particular, HB 2373 authorized and directed the Director of Accounts and Reports to transfer a total of \$2.355 million from the Workers Compensation Fund account to the State General Fund, a total of \$195,671 from the Real Estate Fee Fund to the State General Fund, a total of \$534,517 from the Bank Commissioner Fee Fund to the State General Fund, and a total of \$1,962,500 from the Conservation Fee Fund to the State General Fund.
17. The Legislation, HB 2373, contained language indicating that the amount transferred from the aforementioned Funds to the State General Fund was to reimburse the State General Fund for accounting, auditing, budgeting, legal, payroll, personnel and purchasing services, and any other governmental services performed on behalf of the affected agencies by other state agencies which receive appropriations from the State General Fund to provide such services.

18. This boilerplate language referenced in the foregoing paragraph was utilized solely for the purpose of attempting to avoid the prohibition against such revenue enactments set forth in the Kansas Supreme Court's decision in *Panhandle Eastern Pipeline Co. v. Fadely*, 183 Kan. 803.
19. Notwithstanding the boilerplate language in the legislation, there is no legislative history of any evidence being presented to the legislature that the sweeps were for anything more than a revenue-raising measure to balance the budget.
20. There were no hearings or evidence presented regarding why the subject funds were needed to "reimburse the State General Fund for accounting, auditing, budgeting, legal, payroll, personnel and purchasing services and any other governmental services" performed on behalf of the effected agencies.
21. Defendant State of Kansas in fact did not provide any governmental services as claimed in the legislation or if any services were provided they were otherwise reimbursed from other agency funds which are not the subject of this action. As to the subject fee sweeps, the State acted solely as a repository of the funds collected from the subject agencies who had collected the funds from the named Plaintiffs and those similarly situated. In the alternative, any services provided were *de minimis* and did not remotely reflect the amount of funds swept into the State General Fund pursuant to HB 2373.
22. After the adjournment of the 2009 Legislative Session, the current Governor made cuts in the 2009 approved budget in order to end the fiscal year ending June 30, 2009 with a positive balance as required by the Kansas Constitution. The Governor then made additional cuts and proposed transfers in November 2009 affecting the fiscal year 2010 budget due to a projected fiscal year 2010 deficit.

23. Kansas is facing a projected deficit in the FY 2011 budget. Governor Parkinson's proposed 2011 budget calls for additional fee fund sweeps totaling \$13.7 million, including additional sweeps of the Workers Compensation Fee Fund of \$800,000. Unless enjoined, these and other fee sweeps may be enacted by the 2010 Legislature.

**COUNT I:**

**WORKERS COMPENSATION FUND SWEEP**

24. Plaintiffs Kansas Building Industry Workers Compensation Fund has principal offices at 2101 SW 36<sup>th</sup> Street, Topeka, Kansas 66611; Kansas Workers Risk Cooperative for Counties has principal offices at 700 Jackson Street, Suite 200, Topeka, Kansas 66603; KHA Workers Compensation Fund, Inc. has principal offices at 215 SE 8<sup>th</sup> Street, Topeka, Kansas 66603; Kansas Restaurant and Hospitality Association Self Insurance Fund has principal offices located at 3500 N. Rock Road, Suite 1300, Wichita, Kansas 67226; KAHA Insurance Group has principal offices at 217 SE 8<sup>th</sup> Avenue, Topeka, Kansas 66603-3906; Kansas Automobile Dealers Workers Compensation Fund has principal office at 731 S. Kansas Avenue, Topeka, Kansas 66603; Midwest Builders' Casualty Mutual Company has principal offices at 1100 Walnut Street, Suite 3010, Kansas City, Missouri 64106; Kansas Municipal Insurance Trust has principal offices at 300 SW 8<sup>th</sup> Avenue, Topeka, Kansas 66603; Kansas Eastern Region Insurance Trust has principal offices at 600 Broadway, Suite 200, Kansas City, Missouri 64105-1653; Wichita Auto Dealers Self Insurance Fund has principal offices at P.O. Box 2992, Wichita, Kansas 67201-2992; Kansas Truckers Risk Management Group, Inc. has principal offices at 6900 College Boulevard, Suite 650, Overland Park, Kansas 66211; and Kansas Health Care Association Workers Compensation Insurance Trust Corporation has principal offices at 117 SW 6<sup>th</sup> Avenue, Topeka, Kansas 66603, and are group-

funded workers compensation pools authorized by and organized pursuant to the provisions K.S.A. 44-581 *et seq.*

25. Plaintiffs hold approved certificates of authority from the Commissioner of Insurance to provide mandated workers compensation coverage under the Workers Compensation laws of the State of Kansas on behalf of their employer members.
26. Every Kansas employer is required to secure the payment of compensation to the employers' employees by either insuring with an insurance carrier authorized to transact business of workers compensation in the state, by qualifying and being certified by the Director of Workers Compensation as a self-insurer or by maintaining a membership in a qualified group-funded workers compensation pool.
27. Plaintiffs represent a class of insureds required by law to fund the operations of the Kansas Workers Compensation Fund.
28. The Workers Compensation Fund is a creature of statute administered by the Commissioner of Insurance and established in the State Treasury.
29. The Workers Compensation Fund is liable for payment of awards to certain handicapped employees for claims arising prior to July 1, 1994; for payment of workers compensation benefits to an employee who is unable to receive such benefits from such employees' employer under certain circumstances; reimbursement of an employer or insurance carrier pursuant to the provisions of K.S.A. 44-534(a), and amendments thereto; subsections (d) of K.S.A. 44-556, and amendments thereto; subsection (c) of K.S.A. 44-569, and amendments thereto; K.S.A. 44-569(a) and amendments thereto; the payment of the actual expenses to the Commissioner of Insurance which are incurred for administering the Workers Compensation Fund; and any other payments or disbursements provided by law.

30. On June 1<sup>st</sup> of each year, the Commissioner of Insurance imposes an annual assessment against all insurance carriers, self-insurers and group-funded workers compensation pools insuring payment of compensation under the Workers Compensation Act in an amount sufficient to pay all amounts, including attorneys fees and costs which may be required to be paid from such fund during the current fiscal year less the amount of the estimated unencumbered balance in the Workers Compensation Fund as of June 30, immediately preceding the date the assessment is due and payable.
31. The total amount of each such assessment is to be apportioned among those upon whom it is imposed such that each is assessed an amount that bears the same relation to such total assessment as the amount of money paid or payable in workers compensation claims by such insurance carriers, self-insurers, or group-funded workers compensation pools in the immediately preceding calendar year bears to all such claims paid or payable during such calendar year.
32. The Commissioner of Insurance is required to remit all monies received by or for the Commissioner to the State Treasurer. Upon receipt, the State Treasurer is to deposit the entire amount in the State Treasury to the credit of the Workers Compensation Fund.
33. The primary purpose of the Kansas Workers Compensation Act is the compensation of workers injured in industrial accidents with as little delay as possible and without having to wait for the disposition of collateral issues in which they have no interest.
34. The Kansas Workers Compensation Act and the Kansas Workers Compensation Fund created by the Act serve police power functions.
35. The collection of assessments by the Kansas Commissioner of Insurance pursuant to K.S.A. 2008 Supp. 44-566(a) and the expenditure thereof is limited to those expenditures

related to administration of the Kansas Workers Compensation Act as set forth in K.S.A. 2008 Supp. 44-466(a).

36. On or about June 1, 2009, the Kansas Insurance Department at the direction of the Commissioner of Insurance sent out annual assessment notices to all insurance carriers, self insurers, and group-funded workers compensation pools insuring payment of compensation under the Workers Compensation Act of the State of Kansas.
37. The Notice of Assessment for operation of the Kansas Workers Compensation Fund by the Kansas Insurance Department specifically stated, "Action by the 2009 Kansas Legislature included a sweep of monies from the Workers Compensation Fee Fund into the State General Fund. This action was part of the Legislature's proposal to remedy a revenue shortage in the State General Fund. This Legislative sweep makes it necessary that the Kansas Insurance Department levy an assessment this year of 1.0%."
38. The Kansas Insurance Department has acknowledged that but for the passage of legislation sweeping \$2.355 million of workers compensation fee funds into the State General Fund, no assessment would be necessary.
39. Kansas Commissioner of Insurance, Sandy Praeger, corresponded with legislative leaders during the course of the legislative session protesting the proposed fee sweeps.
40. According to the Commissioner of Insurance, the assessment by the Commissioner for FY 2010 is necessary to offset the legislatively-enacted conversion and transfer of workers compensation fee funds to the State General Fund.
41. Plaintiffs and those entities similarly situated have paid the assessments into the Kansas Insurance Department and the Kansas Insurance Department has acknowledged that whether designated as such or not, all assessments are considered to be paid "under protest" pending a determination by the court in this declaratory judgment action.



42. The class of entities required to pay the assessment, i.e. all insurance carriers, self-insurers and group-funded workers compensation pools insuring the payment of compensation under the Workers Compensation Act of Kansas is so numerous that joinder of all members is impracticable.
43. The Kansas Insurance Department through Commissioner of Insurance Sandy Praeger has acknowledged that if the sweep of Kansas Workers Compensation Fee Funds to the State General Fund is struck down and the sweeps are ordered to be reversed, assessments collected as a consequence of the sweeps will be refunded.
44. Without obtaining the relief requested, these Plaintiffs and those similarly situated will be subjected to multiple assessments for the same expenses related to the Kansas Workers Compensation Fund.
45. The sweep of Workers Compensation Fee Funds so exceeds the reasonable and necessary cost of regulation and administration that it is apparent the State is using the sweep as a general revenue raising measure and not as a valid exercise of police power authority.

## **COUNT II**

### **REAL ESTATE FEE FUND SWEEP**

46. Plaintiff, Kansas Association of Realtors<sup>®</sup>, Inc., is a bonafide professional trade association representing and comprised of Realtors<sup>®</sup> licensed by the State of Kansas and regulated by the Kansas Real Estate Commission.
47. The affairs of the Association are managed by its governing board, which is empowered to do or cause to be done all lawful acts on behalf of the Association and its members, including pursuit of actions on behalf of and for the benefit of its Realtor<sup>®</sup> members. Like authority is possessed by an executive committee which exercises all the powers and

duties of the Board of Directors in the interim between meetings of the Board of Directors.

48. The Kansas Association of Realtors<sup>®</sup> is a 501(c)(6) trade association that has represented the interests of real estate sales persons and brokers in Kansas since 1920.
49. As of November 30, 2009, the Kansas Association of Realtors<sup>®</sup> had approximately 8,550 members that comprised approximately 70% of the licensed real estate sales persons and brokers who reside in Kansas.
50. In order to receive an original license as a real estate salesperson in Kansas, an individual must meet certain requirements and pay licensing fees to the Kansas Real Estate Commission.
51. In order to receive an original license as a real estate broker in Kansas, an individual must meet certain requirements and pay licensing fees to the Kansas Real Estate Commission.
52. Once an original license application has been approved, an individual licensed as a real estate salesperson is required to pay a renewal fee for a two-year licensure period.
53. An individual licensed as a real estate broker is required to pay a \$150 renewal fee for a two-year licensure.
54. Kansas Association of Realtors<sup>®</sup> has standing to challenge the legislative-enacted fee sweep of the fees paid by licensed realtors and brokers into the Real Estate Fee Fund administered by the office of the Kansas Real Estate Commission, inasmuch as 1) the Association's members have individual standing to sue, 2) the interests the Association seeks to protect as part of the litigation are germane to the Association's purpose, and 3) the claim asserted and relief requested do not require individual participation of the Association's members.

55. The Director of the Kansas Real Estate Commission is required by law to remit all monies received from fees collected from licensees to the State Treasurer, who upon receipt is to deposit the entire amount in the State Treasury to the credit of the Real Estate Fee Fund.
56. By law, the Kansas Real Estate Commission is required to transfer 20% of all real estate licensing fees, charges and penalties to the State General Fund. The stated purpose for the 20% transfer is "to reimburse the State General Fund for accounting, auditing, budgeting, legal, payroll, personnel and purchasing services and any and all other state governmental services, which are performed on behalf of the state agency involved by other state agencies which receive appropriations from the State General Fund to provide such services."
57. The Governor's proposed and the legislatively-enacted sweep of the Real Estate Fee Fund in the amount of \$195,671 was in addition to the statutory 20% transfer.
58. The sweep of the Real Estate Fee Fund so exceeds the reasonable and necessary cost of regulation and administration that it is apparent the State is using the sweep as a general revenue-raising measure and not as a valid exercise of police power authority.
59. The swept funds of the Real Estate Fee Fund were derived from the Kansas Savings Incentive Program (KSIP), a program that allowed agencies that chose to participate to keep half of any savings realized during the prior fiscal year.
60. Under the KSIP program and as provided by law, the agency can spend funds during the current fiscal year in three (3) areas only: 1) employee bonuses, 2) technology purchases, and 3) professional development, including official hospitality.

61. By recommendation of the Governor and action by the Legislature, the program was eliminated in FY 2009 and the KSIP funds were swept into the State General Fund for expenditure in other areas.
62. Plaintiff represents a class of licensees required to fund the operations of the Kansas Real Estate Commission and the Real Estate Fee Fund, which licensees are adversely affected by the unlawful appropriation of their fees for a purpose other than the limited purposes as articulated in the statute.

### **COUNT III**

#### **BANK COMMISSIONER FEE FUND SWEEP**

63. Plaintiff Kansas Bankers Association is a bonafide trade association, with its principal office at 610 SW Corporate View, Topeka, Kansas 66615, and which on behalf of its members is the leading advocate for the banking industry in Kansas.
64. The Kansas Bankers Association operates as a 501(c)(6) organization and is governed by a Board of Directors that represents the membership of the association and has the authority to take such action on behalf of and for the benefit of its members, including pursuit of this declaratory judgment action challenging the sweep of funds from the Bank Commissioner Fee Fund within the office of the State Bank Commissioner, the state regulatory agency of the banking industry.
65. Plaintiff Kansas Bankers Association represents a class of banking entities required to pay fees and assessments to the office of the State Bank Commissioner to the credit of the Bank Commissioner Fee Fund for purposes of funding the operations of the Banking Division within the office of the State Bank Commissioner.
66. Kansas Bankers Association has standing to challenge the legislative-enacted fee sweep of the fees paid into the Bank Commissioner Fee Fund administered by the office of the

State Bank Commissioner, inasmuch as 1) the Association's members have individual standing to sue, 2) the interests the Association seeks to protect as part of the litigation are germane to the Association's purpose, and 3) the claim asserted and relief requested do not require individual participation of the Association's members.

67. Plaintiff QC Holdings Companies is a Kansas corporation operating as a supervised lender under the laws of the State of Kansas with a principle place of business at 9401 Indian Creek Parkway, Suite 1500, Overland Park, Kansas 66210.
68. Plaintiff Galt Ventures of Kansas, L.L.C. is a limited liability company doing business as Speedy Cash, a supervised lender under the laws of the State of Kansas with a principle place of business of 3527 North Ridge Road, Wichita, Kansas 67205.
69. Plaintiffs QC Holdings Companies and Galt Ventures d/b/a Speedy Cash as supervised lenders are required to be licensed under the Consumer Credit Code to make consumer loans.
70. Plaintiffs QC Holdings Companies and Galt Ventures, d/b/a Speedy Cash, represent a class of supervised lenders required to pay license fees and assessments to the Division of Consumer and Mortgage Lending within the Office of the State Bank Commissioner, which are deposited in the Bank Commissioner Fee Fund for purposes of funding the operations of the Office of the State Bank Commissioner.
71. The State Bank Commissioner is charged with administering the banking, saving and loan, mortgage business and consumer credit laws of the state.
72. The purpose of these laws is to protect consumers. This is a police power function of the state.
73. The Bank Commissioner is authorized to assess fees and costs associated with the administration of these laws.

74. By law, the Bank Commissioner is required to remit all fees and assessments collected to the State Treasurer for deposit in an account designated to the Bank Commissioner Fee Fund.
75. Within the office of the State Bank Commissioner, there are two divisions: 1) the Division of Banking which is responsible for regulating Kansas state-chartered banks, savings and loan companies and trust companies; and 2) the Division of Consumer and Mortgage Lending which is responsible for regulating mortgage businesses, supervised lenders, payday lenders and money transmitters operating in Kansas. Fees are assessed separately to the entities regulated by each Division, but all fees eventually are deposited into the Bank Commissioner Fee Fund.
76. By law, the Bank Commissioner prior to the beginning of each fiscal year makes an estimate of the expenses to be incurred by the Department during the fiscal year and allocates and assesses banks and supervised lenders in amounts sufficient to fund the anticipated expenses of the office.
77. By law, 20%, up to a maximum of \$200,000, of the amounts remitted to the Treasurer shall be credited to the State General Fund to "reimburse the State General Fund for accounting, auditing, budgeting, legal, payroll, personnel and purchasing services, and any and all other state governmental services, which are performed on behalf of the state agency involved by other state agencies which receive appropriations from the State General Fund to provide such services."
78. The sweep of the Bank Commissioner Fee Fund was in addition to the statutory 20%.
79. The swept funds of the Bank Commissioner Fee Fund were derived from the Kansas Savings Incentive Program (KSIP), a program that allowed agencies that chose to participate to keep half of any savings realized during the prior fiscal year.

80. Under the KSIP program and as provided by law, the agency can spend funds during the current fiscal year in three (3) areas only: 1) employee bonuses, 2) technology purchases, and 3) professional development, including official hospitality.
81. By recommendation of the Governor and action by the Legislature, the program was eliminated in FY 2009 and the KSIP funds were swept into the State General Fund for expenditure in other areas.
82. Following enactment of Senate substitute for House Bill 2373, the Office of the State Bank Commissioner through Bank Commissioner J. Thomas Thull assessed supervised lenders additional sums to offset the sweep of Bank Commissioner Fee Funds. The Commissioner's Notice of Assessment to supervised lenders provided in part, "Over the past several years the Kansas Legislature has made the difficult decision to 'sweep' surplus funds from our agency and others for use in other areas of state government, thereby eliminating that surplus. As a result, our fees must be increased to better reflect the actual cost of regulation and maintain a viable regulatory structure."
83. Beginning with the 2010 renewal period, the Bank Commissioner has announced assessment of a new license fee on all supervised lenders in addition to their new or renewal application fees. The new license fee is based on the volume of Kansas loans during the preceding license year.
84. The Bank Commissioner, in announcing the new assessment to those entities regulated by the Division of Consumer and Mortgage Lending, indicated that the surplus in the Bank Commissioner Fee Fund has allowed the Bank Commissioner to offset or negate the need to raise fees, but that the legislatively-enacted fee sweep resulted in a need to initiate the assessment based on loan volume.

85. Beginning with the 2010 assessments, each entity having a license through the Division of Consumer and Mortgage Lending within the Office of Bank Commissioner will be paying both an application fee and a license fee.
86. Kansas banks are exempt from licensing but pay an annual assessment to the Banking Division, which assessment functions in a similar way for the Banking Division as the license fee does for the Commercial Mortgage Lending Division. Budget expenses of the Banking Division are spread among the banks and the budget expenses of the Commercial Mortgage Lending Division are spread among the companies licensed by the Office of Bank Commissioner.
87. The Office of Bank Commissioner has indicated that sweeps of surplus funds means those funds are not available to offset future budget expenses and could result in increased assessments, both to the banking division and the commercial mortgage lending industry.
88. Assessments of banks is based on their total assets and applied on a graduated scale. The Office of State Bank Commissioner assesses banks annually on July 1 of each year.
89. The sweep of the Bank Commissioner Fee Fund so exceeds the reasonable and necessary cost of regulation and administration that it is apparent the State is using the sweep as a general revenue-raising measure and not as a valid exercise of police power authority.
90. Without obtaining the relief requested, Plaintiffs and those similarly situated will be subjected to multiple assessments for the same expenses relating to the operations of the Office of State Bank Commissioner.



**COUNT IV:**

**CONSERVATION FEE FUND SWEEP**

91. Plaintiff, K & N Petroleum, Inc., is a Kansas corporation licensed by the Conservation Division of the Kansas Corporation Commission to conduct oil and natural gas operations and is a producer of oil and natural gas. Its principal office is at 513 W. 6<sup>th</sup> Street, Ellinwood, Kansas 67526.
92. Plaintiff represents a class of individuals/entities required by law to pay assessments to the Kansas Corporation Commission for credit to the Conservation Fee Fund. The class of entities required to pay assessments which are credited to the Conservation Fee Fund is so numerous that joinder of all members is impracticable.
93. The major source of revenue paid into the Conservation Fee Fund is an assessment on oil producers as authorized by K.A.R. 82-3-206 and an assessment on natural gas producers at the rate established by K.A.R. 82-3-307.
94. By law, all deposits credited to the Conservation Fee Fund are limited to the use of the State Corporation Commission in administering the provisions of K.S.A. 55-172 through 55-184, 55-601 through 55-613, 55-701 through 55-713, 55-901 and 55-1201 through 55-1205 and amendments thereto.
95. The Conservation Fee Fund is created within the State Treasury and any expenditures from The Conservation Fee Fund must be made in accordance with an appropriations act upon warrants of the Director of Accounts and Reports issued pursuant to vouchers approved by the Chairperson of the State Corporation Commission, or by a person or persons designated by the Chairperson.
96. By law, the Corporation Commission must formulate a system of accounting procedures to account for the money credited to the Conservation Fee Fund.

97. Plaintiff, K & N Petroleum, Inc., represents a class of oil and natural gas producers and licensed operators of oil and natural gas wells, the hydrocarbons produced from which are subject to fees and assessments to the Conservation Division of the Kansas Corporation Commission, which are deposited in the Conservation Fee Fund for purposes of funding the operations of the Conservation Division of the Kansas Corporation Commission.
98. By law, whenever the State Corporation Commission determines that the unencumbered balance of monies credited to the Conservation Fee Fund at the end of a fiscal year is more than necessary when considered in relation to the amount of revenues and expenditures estimated for the ensuing fiscal year and an appropriate unencumbered balance in the fund at the end of the ensuing fiscal year, the Corporation Commission is required to proportionately reduce all fees and assessments which are charged, taxed or assessed by the Commission as authorized or required by law other than fees or assessments in amounts prescribed by statute or any penalties authorized by statute and which are collected and deposited to the credit of the Conservation Fee Fund in order to reduce such unencumbered balance in the Fund to an appropriate amount.
99. Amounts remitted by the State Corporation Commission to the State Treasurer are subject to a statutory provision requiring 20% of the amounts remitted to the Treasurer to be credited to the State General Fund for the purported purpose of reimbursing the State General Fund for accounting, auditing, budgeting, legal, payroll, personnel and purchasing services and all other state governmental services which are performed on behalf of the state agency involved by other state agencies which receive appropriations from the State General Fund to provide such services.
100. The sweep of the Conservation Fee Fund was in addition to the statutory 20%.

101. The sweep of the Conservation Fee Fund so exceeds the reasonable and necessary costs of regulation and administration that it is apparent the State is using the sweep as a general revenue-raising measure and not as a valid exercise of police power authority.
102. As reflected in Attorney General Opinion No. 86-138, use of the Conservation Fee Fund for uses other than activities the Kansas Corporation Commission regulates would be contrary to the findings of the Kansas Supreme Court in *Panhandle Eastern Pipeline Co. v. Fadely, supra*, inasmuch as a use of the funds for other than the statutory purpose would constitute the exacting of revenue from the oil and gas industry under the guise of a regulatory fee in violation of Article 11, § 1 of the Kansas Constitution and the Commerce Clause in the 14<sup>th</sup> Amendment of the United States Constitution.

**PRAYER FOR RELIEF COMMON TO ALL PLAINTIFFS**

103. Plaintiffs seek a declaratory judgment ruling the sweeps unconstitutional for the reasons enumerated herein.
104. Plaintiffs seek injunctive relief barring further or future legislatively-enacted transfers of special revenue funds to the State General Fund as a revenue-generating mechanism as Plaintiffs have sufficient cause to believe that the Governor's proposed additional sweeps may be enacted during the pendency of this action.
105. The represented parties herein will fairly and adequately protect the interests of the respective classes.
106. There are questions of law and fact common to the respective classes.
107. The claims of the represented parties herein are typical of the claims of their respective classes.
108. Without obtaining the relieve requested, Plaintiffs and those similarly situated will be subjected to multiple assessments for the same expenses.

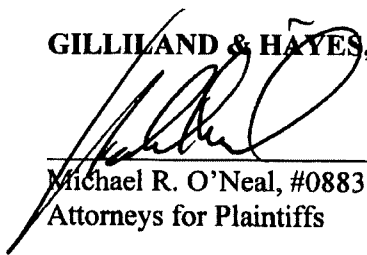
109. The fee sweeps under the facts and circumstances herein constitute an unauthorized and unconstitutional tax on the Plaintiffs and those similarly situated, is an unauthorized revenue enactment levied under the guise of a regulatory fee and is in violation of Article 11, § 1 and § 5 of the Kansas Constitution.
110. The fee sweeps constitute unconstitutional takings, are violative of The Commerce Clause and Fifth and Fourteenth Amendments to the U.S. Constitution, and constitute a denial of Plaintiffs' federal and state constitutional rights to equal protection under the law.
111. Similar action taken during the 2002 Legislative Session with regard to agency fee funds was found constitutionally suspect in AG Opinion 2002-45.
112. Plaintiffs' counsel, a member of the Kansas Legislature, has satisfied the provisions of K.S.A. 46-233(c) by having voted "No" upon the enactment of the challenged measure (May 7, 2009 HJ 713) and filing on the record a constitutional protest of the enactment pursuant to Article 2, § 10 of the Kansas Constitution (June 4, 2009 HJ 781).

WHEREFORE, Plaintiffs pray for an Order of the Court certifying Plaintiffs' Petition as a class action, for a declaratory judgment that the legislatively-enacted fee sweeps contained in Senate substitute for House Bill 2373 (Chapter 144 of the 2009 Session Laws of Kansas) are unconstitutional and void, and for a further Order of the Court in *mandamus* and or *quo warranto* that the fee fund transfers be reversed and the amount of \$2.355 million be restored to the credit of the Workers Compensation Fund, the amount of \$195,671 be restored to the credit of the Real Estate Fee Fund, the amount of \$534,517 be restored to the credit of the Bank Commissioner Fee Fund, and the amount of \$1,962,500 be restored to the credit of the Conservation Fee Fund. Plaintiffs further pray for injunctive relief enjoining further or additional unauthorized fee sweeps during the 2010 Legislative Session or subsequently, for an Order allowing reasonable

attorney's fees to be paid from the respective funds restored, and for such other and further relief as the Court may deem just and equitable.

**GILLILAND & HAYES, P.A.**

By:

  
\_\_\_\_\_  
Michael R. O'Neal, #08830  
Attorneys for Plaintiffs

**TABLE IV**  
**Total Lobbyist Expenditures for the Year 2009**

Organization Lobbyist	Food or Beverage	Gifts, Hon- Payments	Mass Media	Recrea- tion	Communi- cations	Other	Total
KS Assn of Dist Court Clerks & Admin Alice Adams	\$0.00	\$671.27	\$0.00	\$0.00	\$0.00	\$0.00	\$671.27
KS Assn of Financial Services Sandy Braden	\$591.64	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$591.64
KS Assn of Financial Services Ron Gaches	\$807.88	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$807.88
KS Assn of Health Plans Marlee Carpenter	\$900.90	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$900.90
KS Assn of Homes & Services for the Aging Debra Zehr	\$106.82	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$106.82
KS Assn of Insurance Agents Larry Magill Jr	\$2,082.08	\$37.89	\$0.00	\$274.78	\$0.00	\$0.00	\$2,394.75
KS Assn of Private Career Colleges/Schools Phil Black	\$528.65	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$528.65
KS Assn of Property & Casualty Insurance Co David Hanson	\$553.69	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$553.69
<del>KS Assn of Realtors</del> Lucas Bell	\$7,758.48	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	<del>\$7,758.48</del>
KS Assn of School Boards Tom Krebs	\$70.43	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$70.43
KS Assn of School Boards Mark Tallman	\$3,484.13	\$0.00	\$0.00	\$0.00	\$751.07	\$0.00	\$4,235.20
KS Assn of Therapeutic Massage & Bodywork Denise Gum	\$75.00	\$744.00	\$0.00	\$0.00	\$0.00	\$70.00	\$889.00
KS Assn of Wheat Growers Dusti Fritz	\$500.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$500.00
KS Assn of Wheat Growers Dana Peterson	\$730.25	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$730.25
<del>KS Automobile Dealers Assn</del> Don McNeely	\$4,018.60	\$0.00	\$0.00	\$143.91	\$0.00	\$0.00	<del>\$4,162.51</del>
<del>KS Bankers Assn</del> Kathy Olsen	\$13,718.98	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	<del>\$13,718.98</del>
<del>KS Bankers Assn</del> Douglas Wareham	\$18,024.20	\$405.56	\$0.00	\$0.00	\$0.00	\$0.00	<del>\$18,429.76</del>
KS Bar Assn Joseph Molina III	\$4,641.83	\$39.04	\$0.00	\$0.00	\$0.00	\$0.00	\$4,680.87
KS Beer Wholesalers Assn Neal Whitaker	\$34.35	\$0.00	\$0.00	\$274.78	\$0.00	\$0.00	\$309.13

**EXHIBIT F**

3-35

**TABLE IV**  
**Total Lobbyist Expenditures for the Year 2009**

Organization Lobbyist	Food or Beverage	Gifts, Hon. Payments	Mass Media	Recrea- tion	Communi- cations	Other	Total
KS County Appraisers Assn Paul Welcome	\$639.48	\$0.00	\$0.00	\$0.00	\$0.00	\$350.00	\$989.48
KS County Treasurers Assn Steve Kearney	\$5,225.35	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$5,225.35
KS Credit Union Assn John Federico	\$675.59	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$675.59
KS Credit Union Assn Jerel L. Wright	\$10,360.32	\$486.75	\$0.00	\$0.00	\$0.00	\$0.00	\$10,847.07
KS Dental Assn John Peterson	\$215.36	\$0.00	\$0.00	\$275.00	\$0.00	\$0.00	\$490.36
KS Dental Assn Kevin Robertson	\$1,223.51	\$417.28	\$0.00	\$0.00	\$0.00	\$0.00	\$1,640.79
KS Economic Development Alliance Mike Michaelis	\$1,353.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$1,353.83
KS Electric Cooperatives Inc David Holthaus	\$5,028.57	\$45.49	\$0.00	\$325.24	\$0.00	\$104.07	\$5,503.37
KS Electric Power Cooperative Inc Phil Wages	\$1,449.99	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$1,449.99
KS Entertainment LLC John Bottenberg	\$134.05	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$134.05
KS Entertainment LLC William Sneed	\$231.30	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$231.30
KS Farm Bureau Brad Harrelson	\$4,831.94	\$0.00	\$0.00	\$41.00	\$0.00	\$0.00	\$4,872.94
KS Gas Service Mick Urban	\$1,888.11	\$5.54	\$0.00	\$167.59	\$0.00	\$0.00	\$2,061.24
KS Good Roads Inc Whitney Damron	\$638.79	\$39.04	\$0.00	\$88.68	\$0.00	\$0.00	\$766.51
KS Governmental Consulting Brad Smoot	\$1,073.17	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$1,073.17
KS Grain & Feed Assn Ronald Seeber	\$256.69	\$20.00	\$0.00	\$0.00	\$0.00	\$0.00	\$276.69
KS Grain & Feed Assn Tom Tunnell	\$901.33	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$901.33
KS Health Care Assn John Federico	\$322.56	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$322.56
KS Health Care Assn Cindy Luxem	\$501.69	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$501.69

**TABLE IV**  
**Total Lobbyist Expenditures for the Year 2009**

Organization Lobbyist	Food or Beverage	Gifts, Hon. Payments	Mass Media	Recrea- tion	Communi- cations	Other	Total
KS Peace Officers Assn Ed Klumpp	\$1,165.04	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$1,165.04
KS Policy Institute (formerly Flint Hills Pub Pol) Ronald Hein	\$238.01	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$238.01
KS Pork Assn Tim Stroda	\$5,687.94	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$5,687.94
KS Quarter Horse Racing Assn Jonathan Small	\$666.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$666.83
KS Railroads Patrick Hubbell	\$3,810.21	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$3,810.21
KS Ready Mixed Concrete Assn Wendy Harms	\$256.90	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$256.90
KS Ready Mixed Concrete Assn Edward Moses	\$256.90	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$256.90
KS Recreation & Park Assn Doug Vance	\$78.75	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$78.75
<del>KS State Bar of Kansas Hospitality Assn</del> Ronald Hein	\$4,063.37	\$0.00	\$0.00	\$0.00	\$0.00	\$2,323.30	<del>\$3,866.67</del>
KS Rural Independent Telephone Companies Michael Hutfles	\$530.30	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$530.30
KS Sheriffs' Assn John Bottenberg	\$582.52	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$582.52
KS Sheriffs' Assn Patrick Hubbell	\$582.52	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$582.52
KS Sierra Club Tom Thompson	\$0.00	\$0.00	\$0.00	\$0.00	\$3,538.01	\$0.00	\$3,538.01
KS Society for Human Resource Management Natalie Bright	\$589.58	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$589.58
KS Society of Assn Executives Vicki Whitaker	\$1,132.99	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$1,132.99
KS Society of CPA's Tony Scott	\$2,473.46	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$2,473.46
KS Society of Professional Engineers Ron Gaches	\$344.96	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$344.96
KS Soybean Assn Dennis Hupe	\$3,226.86	\$455.40	\$0.00	\$0.00	\$0.00	\$0.00	\$3,682.26
KS Speedway Corporation William Sneed	\$231.30	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$231.30



**Subject:** Fee Sweeps suit

**Attachments:** Attached Image (57.9 KB); Attached Image (85.6 KB); Attached Image (268 KB)

House Colleagues

For anyone who is interested or has questions following the barrage of press over the fee sweep suit recently, I've attached a couple of "actual" news articles that appeared today in the Hutch News. The reporter did a good job of reporting on the true story, the fee sweeps themselves.

I've also attached a list from Research of the complete list of sweeps approved last year, showing all the folks who were impacted. For the D's to claim this is just a bunch of lobbyists complaining, is pretty disingenuous. The primary group of participants is small group-funded workers comp pools representing small employers who provide workers comp coverage for their employees. Yes, realtors, oil & gas producers and bankers were affected and they, the last time I checked, are real people too. The list is also helpful in considering how many of our neighbors and constituents are required to pay fees into funds that are vulnerable to state action sweeping their funds. The regulatory agencies then have the power to assess additional fees to replace fees lost and the vicious cycle of paying in continues. Prior case law considers this practice of sweeping funds to be an unconstitutional tax, a practice I have been criticizing since back in 2001-2002 when it was done during the Graves administration.

I think it was Jefferson who said: "A government big enough to give you everything you want is big enough to take everything you have."

Should you have additional questions, please don't hesitate to ask.

BTW, our office will be short one Chief of Staff for a few days. Brent has advised that his wife will be induced tomorrow a.m. for the birth of their second child. We wish Brent & Connie the best during labor and delivery and are looking forward to their blessed news!



*Michael R. O'Neal*  
Speaker of the House

2/9/2010

**EXHIBIT G**

3-38

# Fee Sweeps supported by Rep. Mike O'Neal: 2002-2010

3-39

House Journal Page 2140; May 2, 2002						
Year	Bill	Citation	Agency	Fund	Amount transferred to SGF	Fiscal Year
2002	SB517	12h	State Bank Commissioner	Bank Commissioners Fee Fund	\$500,000	2003
2002	SB517	15h	State Board of Healing Arts	Healing Arts Fee Fund	\$200,000	2003
2002	SB517	30a	Insurance Department	Insurance Department Service Regulation Fund	\$711,500	2002
2002	SB517	35c	Department of Revenue	Automated Tax System Fund	\$451,302	2002
2002	SB517	57b	Department of Human Resources (Labor)	Special Employment Security Fund	\$159,140	2002
2002	SB517	74b	Insurance Department	Insurance Department Service Regulation Fund	\$750,000	2003
2002	SB517	83k	Department of Administration	State Workers Compensation Self Insurance Fund	\$1,000,000	2003
2002	SB517	83l	Department of Administration	Property Contingency Fund	\$36,291	2003
2002	SB517	83m	Department of Administration	Equipment Lease Purchase Program Administration Clearing Fund	\$112,500	2003
2002	SB517	83n	Department of Administration	Flexible Spending Fund	\$150,000	2003
2002	SB517	85f	Department of Revenue	Division of Vehicles Operating Fund	\$200,000	2003
2002	SB517	91e	Department of Human Resources (Labor)	Workers Compensation Fee Fund	\$500,000	2003
2002	SB517	94e	Department of Aging	Long Term Care Loan and Grant Fund	\$500,000	2003
2002	SB517	95n	Social and Rehabilitation Services	Medicaid Match Fund	\$500,000	2003
2002	SB517	95o	Social and Rehabilitation Services	Social Welfare Fund	\$2,000,000	2003
2002	SB517	97f	Department of Education	Certificate Fee Fund	\$100,000	2002
2002	SB517	116d	State Fire Marshal	Fire Marshall Fee Fund	\$1,700,000	2003
2002	SB517	118k	Kansas Highway Patrol	Motor Vehicle Fund	\$1,008,000	2003
2002	SB517	123g	Department of Agriculture	Petroleum Inspection Fee Fund	\$200,000	2003
2002	SB517	123h	Department of Agriculture	Feeding Stuffs Feed Fund	\$200,000	2003
2002	SB517	129f	Department of Wildlife and Parks	State Agricultural Production Fund	\$200,000	2003
2002	SB517	130j	Department of Transportation	Kansas Savings Incentive Program Account of the State General Fund	\$260,896	2003
2002	SB363	32b	Insurance Department	Workers Compensation Fund of the Insurance Department	\$7,000,000	2002
2002	SB363	37a	State Fire Marshal	Fire Marshall Fee Fund	\$400,000	2003

**EXHIBIT H**

# Fee Sweeps supported by Rep. Mike O'Neal: 2002-2010

04-3

## House Journal Page 2296; May 7, 2004

Year	Bill	Citation	Agency	Fund	Amount transferred to SGF	Fiscal Year
2004	HB2471	20a	Insurance Department	Insurance Dept. Service Regulation Fund	\$150,000	2004

## House Journal Page 828; March 31, 2005

Year	Bill	Citation	Agency	Fund	Amount transferred to SGF	Fiscal Year
2005	SB225	14b	State Board of Healing Arts	Healing Arts Fee Fund	\$750,000	2005
2005	SB225	55a	Department of Transportation	State Highway Fund	\$4,194,134	2005
2005	SB225	89c	Insurance Department	Insurance Department Service Regulation Fund	\$1,000,000	2006
2005	SB225	91b	Judicial Council	Publications Fee Fund	Transfer unencumbered balance in excess of \$175,000	2006
2005	SB225	113f	Department of Education	State Safety Fund	\$2,600,000	2006
2005	SB225	130f	Juvenile Justice Authority	Juvenile Detention Facilities Fund	\$300,000	2006
2005	SB225	134h	Kansas Highway Patrol	Kansas Highway Patrol Motor Vehicle Fund	\$1,000,000	2006
2005	SB225	136c	Emergency Medical Services Board	Emergency Medical Services Operating Fund	\$1,000,000	2006

## House Journal Page 1928; March 30, 2006

Year	Bill	Citation	Agency	Fund	Amount transferred to SGF	Fiscal Year
2006	SB480	69b	Judicial Council	Publications Fee Fund	Transfer unencumbered balance in excess of \$175,000	2007
2006	SB480	92f	Department of Education	State Safety Fund	\$2,000,000	2007

# Fee Sweeps supported by Rep. Mike O'Neal: 2002-2010

3-41

## House Journal Page 1040; April 3, 2007

Year	Bill	Citation	Agency	Fund	Amount transferred to SGF	Fiscal Year
2007	HB2368	84b	Securities Commissioner	Investor Education Fund	\$1,250,000	2008
2007	HB2368	100c	Judicial Council	Publications Fee Fund	Transfer unencumbered balance in excess of \$175,000	2008
2007	HB2368	123g	Department of Education	State Safety Fund	\$1,700,000	2008

## House Bill 2222; February 11, 2010

Year	Bill	Citation	Agency	Fund	Amount transferred to SGF	Fiscal Year
2010	HB222	7a	Securities Commissioner	Investor Education Fund	\$5,000,000	2010

## Kansas Legislature

[Home](#) > [Statutes](#) > Statute

[Previous](#)

[Next](#)

### 46-233

#### Chapter 46.--LEGISLATURE

#### Article 2.--STATE GOVERNMENTAL ETHICS

**46-233. Contracts involving state officer or employee or legislator; prohibited acts, exceptions; challenging constitutionality of legislative action or enactment by legislator; prohibited acts.** (a) (1) No state officer or employee shall in the capacity as such officer or employee be substantially involved in the preparation of or participate in the making of a contract with any person or business by which such officer or employee is employed or in whose business such officer or employee or any member of such officer's or employee's immediate family has a substantial interest and no such person or business shall enter into any contract where any state officer or employee, acting in such capacity, is a signatory to, has been substantially involved in the preparation of or is a participant in the making of such contract and is employed by such person or business or such officer or employee or any member of such officer's or employee's immediate family has a substantial interest in such person or business.

(2) Except as otherwise provided in this subsection, whenever any individual has participated as a state officer or employee in the making of any contract with any person or business, such individual shall not accept employment with such person or business as an employee, independent contractor or subcontractor until two years after performance of the contract is completed or until two years after the individual terminates employment as a state officer or employee, whichever is sooner. This prohibition on accepting employment shall not apply in any case where a state officer or employee who participated in making a contract while employed by the state of Kansas is laid off or scheduled to be laid off from any state position on or after July 1, 2002. As used in this subsection (a)(2), "laid off" and "layoff" mean a state officer or employee in the classified service under the Kansas civil service act, being laid off under K.S.A. 75-2948, and amendments thereto.

(b) No individual shall, while a legislator or within one year after the expiration of a term as legislator, be interested pecuniarily, either directly or indirectly, in any contract with the state, which contract is funded in whole or in part by any appropriation or is authorized by any law passed during such term, except that the prohibition of this subsection (b) shall not apply to any contract interest in relation to which a disclosure statement is filed as provided by K.S.A. 46-239, and amendments thereto.

(c) No individual, while a legislator or within one year after the expiration of a term as a legislator, shall represent any person in a court proceeding attacking any legislative action taken or enactment made during any term such individual served as a legislator as being unconstitutional because of error in the legislative process with respect to such action or enactment unless such legislator voted no upon the enactment of the measure

and declared on the record, during such term, that such legislation was unconstitutional. The prohibition of this subsection (c) shall not apply to a current or former legislator charged with a violation of such legislative action or enactment.

(d) Subsections (a) and (b) shall not apply to the following:

(1) Contracts let after competitive bidding has been advertised for by published notice; and

(2) contracts for property or services for which the price or rate is fixed by law.

(e) When used in this section:

(1) "Substantial interest" shall have the same meaning ascribed thereto by K.S.A. 46-229, and amendments thereto, and any such interest held within the preceding 12 months of the act or event of participating in the preparation of making a contract.

(2) "Substantially involved in the preparation or participate in the making of a contract" means having approved or disapproved a contract or having provided significant factual or specific information or advice or recommendations in relation to the negotiated terms of the contract.

**History:** L. 1974, ch. 353, § 19; L. 1975, ch. 272, § 6; L. 1983, ch. 172, § 9; L. 1991, ch. 150, § 25; L. 1995, ch. 77, § 1; L. 1996, ch. 255, § 9; L. 1997, ch. 155, § 2; L. 2000, ch. 152, § 8; L. 2003, ch. 149, § 32; July 1.

January 20 2010

*RAB*  
From: Richard Boeckman  
To: County Commissioners

Subj: HB 2373/ Sweeps Lawsuit

1. This letter is being sent to the Boards of County Commissioners of the various counties listed in enclosure (1). HB 2373 provided that the various counties listed in the enclosure would not receive certain distributions from the Special County Mineral Production Tax Fund in 2009. As you may recall, I corresponded with you about this issue in September 2009. At the Kansas Association of Counties Annual Meeting in November Barton County sponsored an amendment to the KAC platform that the legislature not "sweep" county funding in the future. That amendment was added to the KAC platform.
2. I recently learned that Speaker of the House Mike O'Neal, in his capacity as a private lawyer, will soon file a lawsuit against the State of Kansas on behalf of various Kansas agencies. The lawsuit will request that the Court determine that the sweeping of funding from the state agency plaintiffs was unconstitutional. The lawsuit will request the Court file an order preventing further sweeps of funds, and that the Court order moneys swept by the Legislature in 2009 be refunded to the affected state agencies.
3. KAC staff personnel told me about this pending lawsuit. I then contacted Mr. O'Neal to ask him about the lawsuit. I learned that Counties affected by HB 2373 are not presently included in the lawsuit. When I explained to Mr. O'Neal how HB 2373 affected various counties, he indicated that such counties could be included in this pending lawsuit if the counties want to participate.
4. I anticipate Mr. O'Neal will file this lawsuit on behalf of his clients in the very near future.
5. Mr. O'Neal has indicated to me that if County Commissioners want to join this lawsuit, that he would file an amendment to the petition to add counties as additional party plaintiffs.
6. Mr. O'Neal is charging his clients a fee based upon the proportion each client's loss bears in relation to the total loss of all clients. He told me that if counties want to participate in this lawsuit, that counties would pay fees based upon the work done to file the amended petition for the counties. The counties would pay a proportion of the fees for work done after the filing of the amended petition. He intends to ask the Court to order fees paid from whatever recovery occurs, if any. While I cannot predict the amount of fees, if fees in fact are paid, my personal thought is that if a number of counties were to join in this lawsuit, that the cost to each county would be relatively minor when compared to the potential results. Those results could include a recovery of the money that was lost in 2009. More importantly, a Court order declaring that sweeps are unconstitutional would be a very positive result that should stop future sweeps.
7. The Barton County Commissioners are interested in joining this litigation as a party plaintiff. However, they believe it appropriate that other counties join Barton County as

Plaintiffs. Consequently, I request that the respective Boards of County Commissioners consider their willingness to join Barton County as plaintiffs in this sweeps lawsuit.

8. I think it is to the advantage of the counties that if counties join the sweeps lawsuit that counties do so promptly. If your county is interested in joining this lawsuit please contact me as soon as possible. For the moment I have agreed to be the point of contact for the counties.



COUNTY NAME	CITY	AMOUNT
Alle.	Iola	\$364.94
Barber	Medicine Lodge	\$55,579.98
Barton	Great Bend	\$21,181.45
Bourbon	Fort Scott	\$403.32
Butler	El Dorado	\$4,640.68
Chase	Cottonwood Falls	\$267.25
Chautauqua	Sedan	\$3,226.56
Cheyenne	Saint Francis	\$9,201.25
Clark	Ashland	\$11,163.95
Comanche	Coldwater	\$12,624.88
Cowley	Winfield	\$4,117.18
Crawford	Girard	\$120.66
Edwards	Kinsley	\$2,867.15
Elk	Howard	\$339.64
Ellis	Hays	\$15,270.80
Ellsworth	Ellsworth	\$3,344.43
Finney	Garden City	\$76,435.48
Ford	Dodge City	\$1,861.68
Franklin	Ottawa	\$50.17
Gove	Gove	\$6,567.91
Grant	Ulysses	\$108,022.74
Gray	Cimarron	\$1,658.48
Greeley	Tribune	\$5,470.97
Greenwood	Eureka	\$935.71
Hamilton	Syracuse	\$7,776.24
Harper	Anthony	\$10,470.37
Harvey	Newton	\$2,223.52
Haskell	Sublette	\$109,984.16
Hodgeman	Jetmore	\$1,606.20
Jefferson	Oskaloosa	\$180.08
Kearny	Lakin	\$62,806.82
Kingman	Kingman	\$15,637.91
Kiowa	Greensburg	\$8,270.69
Labette	Oswego	\$6,319.14
Lane	Dighton	\$18,352.99
Marion	Marion	\$1,513.23
McPherson	McPherson	\$1,055.90
Meade	Meade	\$1,919.50
Miami	Paola	\$519.99
Montgomery	Independence	\$11,668.18
Morris	Council Grove	\$400.36
Morton	Elkhart	\$50,250.90
Nemaha	Seneca	\$694.74
Neosho	Erie	\$38,237.64

Ness	Ness City	\$19,668.07
Norton	Norton	\$564.50
Pawnee	Larned	\$1,660.13
Phillips	Phillipsburg	\$791.18
Pratt	Pratt	\$6,646.82
Reno	Hutchinson	\$5,651.47
Rice	Lyons	\$9,333.62
Rooks	Stockton	\$15,966.41
Rush	LaCrosse	\$1,871.17
Russell	Russell	\$9,031.63
Saline	Salina	\$200.62
Scott	Scott City	\$8,791.26
Sedgwick	Wichita	\$1,455.51
Seward	Liberal	\$12,148.55
Sheridan	Hoxie	\$4,187.38
Sherman	Goodland	\$614.98
Stafford	Saint John	\$14,833.98
Stanton	Johnson	\$30,880.76
Stevens	Hugoton	\$83,090.46
Sumner	Wellington	\$6,885.36
Thomas	Colby	\$717.21
Trego	Wakeeney	\$4,972.78
Wabaunsee	Alma	\$352.42
Wallace	Sharon Springs	\$2,074.23
Wichita	Leoti	\$727.12
Wilson	Fredonia	\$23,756.50
Woodson	Yates Center	\$373.66
Total		\$962,853.60

# Kansas House Democratic Leadership

Paul Davis  
DEMOCRATIC LEADER

Jim Ward  
ASSISTANT LEADER

Barbara Ballard  
CAUCUS CHAIR

Marti Crow  
AGENDA CHAIR

Eber Phelps  
DEMOCRATIC WHIP

Cindy Neighbor  
POLICY CHAIR



February 22, 2010

House Speaker Mike O'Neal  
300 SW 10<sup>th</sup> Avenue  
Topeka, Kansas 66612

Dear Mr. Speaker,

The class action lawsuit, *Kansas Building Industry Workers Compensation Fund, et al. v. State of Kansas*- of which you are lead attorney- has raised tremendous concerns throughout the general public and the Kansas Legislature. We had hoped you would openly explain your involvement in this case when you filed the petition on January 21, 2010. Unfortunately, you have declined to address unsettling issues.

We respectfully request that you recuse yourself and your law firm from this case. The House cannot work through a \$400 million deficit when the budget process has been compromised. Failing to recuse yourself and your firm will send a clear message to the people of Kansas that you are more interested in soliciting legal work for yourself than solving the state's financial crisis. It would be a disservice to the leadership position you hold, the legislative body you lead, and the constituents you represent to continue taking part in this suit.

This request is substantiated by the following:

1. **It is problematic, if not impossible, to reconcile your public role as Speaker of the House with your obligation as these special interests' private attorney.** As Speaker, you determine the agenda of the Kansas House of Representatives. As private attorney, you are paid to fervently defend the cause of your clients. Your clients are some of the most influential special interest groups in Kansas politics and have business before the Legislature regularly. You have already cast a number of votes that furthers their cause. This can easily be perceived as a conflict of interest.
2. **The circumstances and timeline under which this lawsuit coalesced are deeply troubling.** You have voted in favor of special fee fund sweeps on multiple occasions in the past. Although you have also voted against some sweeps, you have never submitted a formal protest against a sweep until June 2009. This raises the suspicion that you took this action only to satisfy a particular statute that would enable you to provide legal representation in this case. We all have jobs outside the Statehouse that we juggle with our legislative duties during the session. However, this is yet another example of how the nature of this suit – and your relationship with special interest clients- fogs the line between Speaker of the House and private attorney.

EXHIBIT K

348

3. **Considering your unique relationship with the plaintiffs in both public and private capacities, your contract as their counsel should be made public.** Are you collecting an hourly rate only, a contingency fee only, or a combination of the two? Kansans deserve to know *specifically* how much you stand to personally profit from this case, especially since evidence suggests that you sought this private business opportunity from the vantage point of your public position.

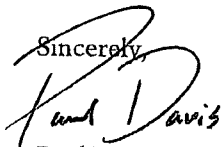
This is about propriety and public trust. As Speaker of the House, you have a commanding role in the appropriations process. Concurrently, you are challenging a specific appropriation as a private attorney on behalf of special interest groups. This provokes reasonable uncertainty about which role you play when you sit in the Speaker's chair. It puts the integrity of the entire legislative institution at risk.

In the past you have been ardently opposed to the judicial branch dictating appropriations in court. In fact, you noted in your official response to the Governor's 2010 State of the State that lawsuits against the state "force the state to spend more tax money to defend itself when it is well known that there are insufficient funds under current circumstances to do all we would like to be able to do." Your lawsuit is no different.

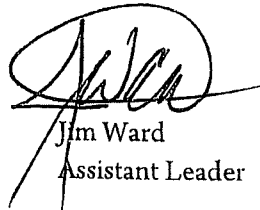
We sincerely hope you will voluntarily do the right thing for the people of Kansas and bring this controversy to an end. However, we are prepared to take formal action if you do not.

We look forward to your timely response.

Sincerely,



Paul Davis  
Democratic Leader



Jim Ward  
Assistant Leader



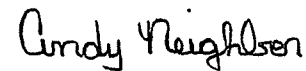
Eber Phelps  
Democratic Whip



Barbara Ballard  
Caucus Chair



Marti Crow  
Agenda Chair



Cindy Neighbor  
Policy Chair

Cc: Members of the Kansas House of Representatives, Members of the Kansas Senate

STATE OF KANSAS  
HOUSE OF REPRESENTATIVES



MICHAEL R. (MIKE) O'NEAL  
SPEAKER

To: House Members and Media

From: Speaker Mike O'Neal 

Date: March 3, 2010

Re: Response to February 22, 2010 Democrat Leadership letter

For the past few weeks, I've endured an unprecedented barrage of personal attacks by Democrat leadership. They have used falsehoods and innuendo to make baseless and unjustified attacks on my integrity. Democrat leadership has criticized a suit I was asked to file seeking an opinion on the legality of a bill, passed over my objection in 2009, which swept money from privately funded trust accounts into the State General Fund. Both a prior Supreme Court case and a more recent Attorney General's opinion have addressed the unconstitutionality of these sweeps. Although Democrat leadership knows that I have not violated any ethical duties, they have engaged in a series of made-for-the-media public criticisms of the suit and my involvement, making reckless allegations intended to mislead the public.

I have, up to this point, chalked the attacks up to the partisan attacks we're used to seeing from Democrat leadership in both the House and Senate. However, last week House Democrat leadership crossed the line of decency by issuing a formal letter attacking my integrity and threatening me if I did not withdraw from the case. The letter, which Democrat leadership chose to widely publicize, contains untruths and false accusations that are clearly meant to cast me in a false light and with the apparent intent to disrupt this year's legislative session.

They've offered no evidence for their claim that I solicited legal work using my public office, and this accusation is particularly outrageous and utterly false. Such baseless accusations are unbecoming to members of the Kansas Legislature. I'm deeply disappointed that Democrat leadership has resorted to such shameful behavior. They have

TOPEKA ADDRESS

STATE CAPITOL BLDG., SUITE 370-W  
TOPEKA, KS 66612  
785-296-2302  
e-mail: [mike.oneal@house.ks.gov](mailto:mike.oneal@house.ks.gov)

104TH DISTRICT

HUTCHINSON/NORTHEAST RENO COUNTY  
website: [reponeal.com](http://reponeal.com)

EXHIBIT L

3-50

TO: House Members and Media  
March 3, 2010  
Page 2

done a disservice to the House and their own Democrat caucus, most, if not all of whom were unaware of their leadership's letter until after the fact.

The press and legislative colleagues alike know that I have not shied away from answering questions about the case. The details and my involvement are a matter of public record. They are also aware that I followed every applicable rule relating to my service as a citizen legislator and attorney. Our chief attorney in the Legislature, Revisor Mary Torrence, has noted that there are no prohibitions against attorney legislators representing clients in matters involving the State. In fact, such representation is clearly authorized by state law, which the Revisor has found I complied with in full. I satisfied all legal and ethical requirements dealing with a constitutional challenge by voting against the suspect legislation and filing a formal protest challenging the legality of the fee sweeps in the 2009 budget bill. I have not, in her legal opinion, engaged in any misconduct. (See attached)

The attacks by Democrat leadership are extremely disappointing because they are so disingenuous. Several members of House Democrat leadership are themselves attorneys, each with a list of clients that is, for the most part, unknown to the public. Attorney legislators can and do represent clients who are involved in proceedings involving the state, including: clients accused of crimes charged by the State, clients or constituents defending or pursuing claims in State agency administrative hearings, and school districts with business before the Legislature, to name a few examples. In fact, House Minority Leader Davis' own law firm has a case pending in the Kansas Supreme Court challenging the constitutionality of one of our tort reform statutes.

We have a citizen Legislature. Members come from all walks of life and most have jobs and professions outside of the Legislature. Some, for example, are employees or former employees of public institutions with regular business before the Legislature. Others work in private industries that have matters come before the Legislature. This has been the case since statehood, and it is a good and honorable system. The alternative is to have a full time Legislature with career politicians, something our constituents neither deserve nor desire.

By claiming in their letter that the suit has "compromised" the budget process, Democrat leaders appear to be admitting that they fear the practice of sweeping Kansas

TO: House Members and Media

March 3, 2010

Page 3

taxpayer fee funds into the State General Fund is in jeopardy. Do they want to be able to continue taking trust funds collected for specific statutory purposes and spending that money on totally different programs? They call the suit a "special interest" lawsuit. It is telling that Democrat leadership would disparage the "special interest" Kansas taxpayers have in protecting their funds from unauthorized sweeps. This taxpayer fee suit does not seek additional State funds, just that their funds be returned to where they belong. Their claim, simply, is that the sweeps constitute an unauthorized tax. Their request for a judicial answer is much the same as the case filed by the Attorney General to question the constitutionality of state-owned and operated casinos. The court will decide, "yes" or "no", whether sweeping privately-funded fee funds into the State General Fund for a general revenue-raising purpose is legal.

At last weekend's State Democrat Party meeting, we learned that the moving force behind the attacks was probably the Labor Caucus, which was quoted as demanding that Democrat leadership take some action against me. They also called for elimination of tax exemptions for churches and such non-profit organizations as the Girl Scouts. Governor Parkinson was quoted at the meeting as saying "the public is angry and it looks like it is angry at us", meaning Democrats. He's right. He went on to say "but that's not who we are". If that's not who they are, then we call on their elected leadership to discontinue their baseless, personal attacks and work with Republicans to reach solutions for our budget woes that don't involve punishing Kansas taxpayers for the current budget shortfall.

House Rules provide that one of the duties of the Speaker is "to preserve order and decorum". Unfortunately, we've had far too little civility and decorum. If, notwithstanding the Revisor's opinion, the Democrat House leadership has credible proof of actual misconduct on my part, then they should file a complaint and follow the process so that the truth can come out, instead of waging a war in the press. I have done nothing wrong. In any event, as Speaker I will work to see that order and decorum are restored in the House. I look forward to working with Democrat leadership and the Democrat caucus to address the pressing issues facing the State in a respectful and civil manner, knowing there will be, at times, honest disagreement. It's time for the vicious and unproductive personal attacks to stop.

Date: \_\_\_\_\_

*Thurs. 2.4.10*

# Opinion

## The speaker overreaches

( ) Leavenworth Times  
Manhattan Mercury

**K**ansas House Speaker Mike O'Neal ought to withdraw from a civil lawsuit he filed last month against the state of Kansas on behalf of 17 businesses, insurance funds and trade organizations. In the alternative, he should step aside as speaker and consider giving up his seat in the House of Representatives.

Rep. O'Neal, a Hutchinson Republican who also is a lawyer, says state law allows legislators who are lawyers to do what he is doing. He could be right on that point. Nevertheless, what he is doing also involves a conflict of interest, and the veteran lawmaker is surely savvy enough to recognize that.

Although a division in the Department of Administration is named as the defendant, the lawsuit challenges the Legislature's decision last year to take idle funds from a number of accounts that had been set aside for specific purposes and commit the money to general government programs. Rep. O'Neal's clients, which include the Kansas Building Industry Workers Compensation Fund, the Kansas Bankers Association and the Kansas Realtors Association, had paid fees into those accounts. Rep. O'Neal apparently objected at the time to the decision, one of many actions lawmakers took to balance the budget without raising taxes. Some \$5 million was removed from the accounts, and the groups involved, while hardly the only groups hurt by the Legislature's budget decisions, would seem to have plenty of reason to be unhappy.

Said Rep. O'Neal to the Associated Press: "This is one example of government overreaching, and it needs to stop. If guys like me can't stop it, then the government has gotten too powerful."

We would counter his latter assertion by noting that guys like Rep. O'Neal, who write state laws, either have the authority to stop it or can acquire it. What's more, when guys like Rep. O'Neal, who runs a legislative chamber charged with representing the citizens of Kansas, sue the state, it is they who are exceeding their authority and are overreaching.

This is not about retaining the right to be a citizen and a legislator, as Rep. O'Neal would like to believe. He is welcome to pursue his legal career as long as it doesn't conflict with or otherwise interfere with his duties as a legislator. And his assertion that his lawsuit's costs are being paid with private funds, not taxpayer funds isn't entirely correct. It is taxpayer money, after all, that will be spent to defend the state agency.

*62*



Date: \_\_\_\_\_

Sat. 2.6.10

- |   |                                     |  |                          |   |
|---|-------------------------------------|--|--------------------------|---|
| <input type="checkbox"/> Topeka Capital Journal | <input type="checkbox"/>            | <input type="checkbox"/> Hays Daily News           | <input type="checkbox"/> | <input type="checkbox"/> Leavenworth Times      |
| <input type="checkbox"/> Wichita Eagle          | <input type="checkbox"/>            | <input type="checkbox"/> Hutchinson News           | <input type="checkbox"/> | <input type="checkbox"/> Manhattan Mercury      |
| <input type="checkbox"/> Kansas City Star       | <input type="checkbox"/>            | <input type="checkbox"/> Iola Register             | <input type="checkbox"/> | <input type="checkbox"/> Olathe Daily News      |
| <input type="checkbox"/> Chanute Tribune        | <input type="checkbox"/>            | <input type="checkbox"/> Johnson County Sun        | <input type="checkbox"/> | <input type="checkbox"/> Salina Journal         |
| <input type="checkbox"/> Dodge City Daily Globe | <input type="checkbox"/>            | <input type="checkbox"/> Junction City Daily Union | <input type="checkbox"/> | <input type="checkbox"/> Winfield Daily Courier |
| <input type="checkbox"/> Emporia Gazette        | <input checked="" type="checkbox"/> | <input type="checkbox"/> Lawrence Journal World    |                          |   |
| <input type="checkbox"/> Garden City Telegram   |                                     |  |                          |   |

## EDITORIALS

### Inappropriate action

**It may not be illegal**, but having a top legislative leader acting as the attorney in a lawsuit against the state certainly sends the wrong message.

**A**t the very least, Kansas House Speaker Mike O'Neal's decision to represent clients who are suing the state is a major distraction for lawmakers.

At worst, it could raise serious ethical concerns about possible conflicts of interest involving a legislative leader who wields powerful control over what issues are considered by his chamber.

O'Neal is representing 20 plaintiffs who are challenging the constitutionality of a provision in last year's final appropriations bill that swept unused fees from various state funds. In defending his decision to act as the group's attorney, the speaker cited the fact that he voted against the appropriations bill and filed a written protest. He also said he has fully complied with state ethics laws in the matter.

Meeting the letter of the law is not the key issue here. Disagreeing, even vehemently, with a decision by the Kansas House doesn't make it OK for the speaker to get involved in a lawsuit against the state. Legislating is all about compromise and accepting the will of the majority. It just isn't appropriate for the leader of the House to be filing suit over a decision approved by the majority of House members.

A fellow legislator's call on Friday for O'Neal to step down as speaker may be an overreaction, but not by much. In the current economic crisis the state needs a speaker who is able to maintain a certain level of objectivity, not one who is actively fighting the state government. If he has problems with state laws, he has a powerful podium to address those issues, but it should be in the Legislature, not in the courtroom.

### Take a number

**Unfortunately, promises** don't pay the state's bills.

**T**here are promises and there are promises.

This week, Jane Carter, executive director of the Kansas Organization of State Employees, decried the news that the state probably couldn't afford pay raises for its employees this year by saying, "The Legislature made a promise to the state employees of Kansas to respect the work they do and to reward it with decent pay ..."

Carter's group represents more than 11,000 state workers. Most, if not all, of them probably are doing a great job that warrants a higher salary than they are getting. As the home of Kansas University, Lawrence is well aware of how important state salaries are not only to individuals but to the local economy.

However, sometimes promises bump smack into a reality that makes the promise impossible to keep. The state has made a lot of "promises" to fund salaries, highways, schools and social services. The "promise" to raise state salaries closer to the market rate may have been sincere, but things change.

We respect the work done by state workers, but in a year that legislators are seriously looking at cutting even their own salaries, any individual or group trying to force the state to make good on a funding "promise" had better take a number and go to the end of the line.

39

3-54

THE TOPEKA CAPITAL JOURNAL  
**cjonline.com**

YOU ARE HERE: [CJOnline](#) » [Opinion](#)

## Editorial: O'Neal oversteps

BY THE CAPITAL JOURNAL EDITORIAL BOARD

February 6, 2010 - 10:35pm

House Speaker Mike O'Neal has been running his leadership office with an air of entitlement since he won the job before the 2009 legislative session — he's entitled to do as he pleases, and whatever he does is always OK.

But it isn't, really. Some of the things that transpired early under the Hutchinson Republican's watch haven't passed the smell test, and his latest stunt is downright odorous.

O'Neal recently filed a lawsuit against the state and is acting as lead attorney on behalf of several clients who claim the Legislature violated the rights of business groups last year by seizing \$2.3 million from special fee accounts to close a budget deficit.

By all accounts, it sounds as though the business groups may have a legitimate complaint. But the House Speaker shouldn't be leading their cause, particularly one who has railed against school districts who use public funds to finance lawsuits against the state under the banner of Schools For Fair Funding.

O'Neal argues there's no comparison because his clients aren't using public money to finance their lawsuit. Granted, that's the case at this time, but if they win O'Neal's fees likely would come from state payments to the plaintiffs. That some of his clients have contributed to his political campaigns raises the stench that permeates the entire affair.

Criticism of O'Neal has been bipartisan. Assessments of his actions have ranged from a conflict of interest to a violation of the state's code of professional conduct for lawyers.

It isn't the first time O'Neal's judgment has been questioned.

Before the 2009 legislative session opened, the House leadership team led by O'Neal authorized raises and bonuses for staff political appointees, shortly before Republicans began calling for reductions in state employees compensation, including layoffs, furloughs and salary cuts.

Recipients of the raises and bonuses included O'Neal's chief of staff, the House majority leader's chief of staff and the spokesman for the House Republican caucus staff.

O'Neal's wife, Cindy, was hired in January 2009 to fill the newly created position of Republican caucus liaison, at a salary of \$27,000. Cindy O'Neal had worked for the Legislature in different positions for 21 years, but the new position was a step up in salary.

When questioned about his wife's new job, O'Neal said that he had nothing to do with it and that it was handled by the House majority leader's chief of staff.

We've said it before, but it bears repeating that the majority leader's chief of staff and the Republican caucus staff probably needed no urging to hire the wife of the newly-elected House Speaker. The raises and bonuses that had been handed out contributed to the sense of impropriety.

3-55

The Kansas Governmental Ethics Commission later rejected an ethics complaint filed against O'Neal in connection with his wife landing the job as Republican caucus liaison, saying there wasn't sufficient evidence to support the claim.

We won't argue with the commission's ruling, but all the maneuvering still doesn't pass the smell test.

The odor lingers, and grows.

**900% Gain on Penny Stocks**

Join today to receive our free newsletter, alerts, tips and much more.  
[www.StockPickTrading.com](http://www.StockPickTrading.com)

**Super Cheap Home Insurance**

Get Discount Homeowners Insurance Online - Rates from \$20 / Month.  
[Discount-Home-Insurance.org](http://Discount-Home-Insurance.org)

**You Could Profit with Jim Cramer**

Jim tells you which stocks he's buying & selling - before he trades.  
[www.ActionAlertsPLUS.com](http://www.ActionAlertsPLUS.com)

*As a result...*

© Copyright 2010 THE TOPEKA CAPITAL JOURNAL

3-56

Date: \_\_\_\_\_

544 2-7-10

# EDITORIALS

## QUESTION OF JUDGMENT

# A bad call

*Speaker Mike O'Neal's decision to sue state raises serious conflict of interest questions*

- Topeka Capital Journal
- Wichita Eagle
- Kansas City Star
- Chanute Tribune
- Dodge City Daily Globe
- Emporia Gazette
- Garden City Telegram

House Speaker Mike O'Neal has been running his leadership office with an air of entitlement since he won the job before the 2009 legislative session — he's entitled to do as he pleases, and whatever he does is always OK.

But it isn't, really. Some of the things that transpired early under the Hutchinson Republican's watch haven't passed the smell test, and his latest stunt is downright odorous.

O'Neal recently filed a lawsuit against the state and is acting as lead attorney on behalf of several clients who claim the Legislature violated the rights of business groups last year by seizing \$2.3 million from special fee accounts to close a budget deficit.

By all accounts, it sounds as though the business groups may have a legitimate complaint. But the House Speaker shouldn't be leading their cause, particularly one who has railed against school districts who use public funds to finance lawsuits against the state under the banner of Schools For Fair Funding.

O'Neal argues there's no comparison because his clients aren't using public money to finance their lawsuit. Granted, that's the case at this time, but if they win O'Neal's fees likely would come from state payments to the plaintiffs. That some of his clients have contributed to his political campaigns raises the stench that permeates the entire affair.

Criticism of O'Neal has been bipartisan. Assessments of his actions have ranged from a conflict of interest to a violation of the state's code of professional conduct for lawyers.

It isn't the first time O'Neal's judgment has been questioned.

Before the 2009 legislative session

opened, the House leadership team led by O'Neal authorized raises and bonuses for staff political appointees, shortly before Republicans began calling for reductions in state employees compensation, including layoffs, furloughs and salary cuts.

Recipients of the raises and bonuses included O'Neal's chief of staff, the House majority leader's chief of staff and the spokesman for the House Republican caucus staff.

O'Neal's wife, Cindy, was hired in January 2009 to fill the newly created position of Republican caucus liaison, at a salary of \$27,000. Cindy O'Neal had worked for the Legislature in different positions for 21 years, but the new position was a step up in salary.

When questioned about his wife's new job, O'Neal said that he had nothing to do with it and that it was handled by the House majority leader's chief of staff.

We've said it before, but it bears repeating that the majority leader's chief of staff and the Republican caucus staff probably needed no urging to hire the wife of the newly-elected House Speaker. The raises and bonuses that had been handed out contributed to the sense of impropriety.

The Kansas Governmental Ethics Commission later rejected an ethics complaint filed against O'Neal in connection with his wife landing the job as Republican caucus liaison, saying there wasn't sufficient evidence to support the claim.

We won't argue with the commission's ruling, but all the maneuvering still doesn't pass the smell test.

The odor lingers, and grows.

11

3-57

Date: Sun. 2-7-10

- |                                     |                        |                          |                           |                          |                        |
|-------------------------------------|------------------------|--------------------------|---------------------------|--------------------------|------------------------|
| <input type="checkbox"/>            | Topoka Capital Journal | <input type="checkbox"/> | Hays Daily News           | <input type="checkbox"/> | Leavenworth Times      |
| <input checked="" type="checkbox"/> | Wichita Eagle          | <input type="checkbox"/> | Hutchinson News           | <input type="checkbox"/> | Manhattan Mercury      |
| <input type="checkbox"/>            | Kansas City Star       | <input type="checkbox"/> | Iola Register             | <input type="checkbox"/> | Olathe Daily News      |
| <input type="checkbox"/>            | Chanute Tribune        | <input type="checkbox"/> | Johnson County Sun        | <input type="checkbox"/> | Salina Journal         |
| <input type="checkbox"/>            | Dodge City Daily Globe | <input type="checkbox"/> | Junction City Daily Union | <input type="checkbox"/> | Winfield Daily Courier |
| <input type="checkbox"/>            | Emporia Gazette        | <input type="checkbox"/> | Lawrence Journal World    |                          |                        |
| <input type="checkbox"/>            | Garden City Telegram   |                          |                           |                          |                        |

**WE BLOG** EXCERPTS FROM OUR BLOG  
[HTTP://BLOGS.KANSAS.COM/WEBLOG](http://blogs.kansas.com/weblog)

**O'Neal's double duty looks bad**

House Speaker Mike O'Neal, R-Hutchinson, is feeling some deserved heat for doubling as an attorney representing insurance funds, businesses and trade groups in a suit against the state challenging the constitutionality of the state's confiscation of cash-in-fee funds related to conservation, banking, workers' compensation and real estate. Democrats and superintendents see a double standard, in that O'Neal has criticized the Schools for Fair Funding lawsuit against the state and O'Neal and his firm could end up collecting a lot of money from the state. Worse, O'Neal accepted a total \$5,000 in campaign donations from five of the 17 plaintiff organizations. Rep. Mari Crow, D-Leavenworth, even called for O'Neal to step down. That seems premature, but O'Neal's actions look bad at best. Gov. Mark Parkinson said, "We are in an unprecedented financial crisis in the state. It's time for us all to pull together and work through it. It's not time for us to be filing lawsuits against each other."

**Would Parkinson veto spending cuts?**

Gov. Mark Parkinson said in his State of the State address that he didn't support more budget cuts. So does that mean he would veto any bill that has more cuts? Because the state doesn't know exactly how big the budget hole will end up being, Parkinson wouldn't say that there are no circumstances in which he would cut additional budgets. "I'm very comfortable saying that if the deficit is \$400 million, I don't think we should cut anymore," he told The Eagle editorial board. But Parkinson said, "I don't want to draw a deep line in the sand and say that I'm not open to any discussions, because that's not productive in the process."

**Don't hold breath on medical marijuana**

The Obama administration's acceptance of state laws allowing medical marijuana renewed the hopes of proponents of legalizing it in Kansas. And now state Rep. Gail Finney, D-Wichita, can point to a new poll as she pushes her legalization bill. 58 percent of Kansans in a new SurveyUSA poll said they think marijuana use should be legal for medicinal purposes. The poll, sponsored by KWCH, Channel 12 in Wichita, found support strongest among 18- to 34-year-olds and western Kansans (both 68 percent). Still, High Times assessed Kansas' chances of becoming the 15th state to legalize medical marijuana "not very likely."

26

3-58

Date: \_\_\_\_\_

*Thurs 2-11-2010*

- |                            |                               |                            |
|----------------------------|-------------------------------|----------------------------|
| ( ) Topeka Capital Journal | ( ) Hays Daily News           | ( ) Leavenworth Times      |
| ( ) Wichita Eagle          | ( ) Hutchinson News           | ( ) Manhattan Mercury      |
| ( ) Kansas City Star       | ( ) Iola Register             | ( ) Olathe Daily News      |
| ( ) Chanute Tribune        | ( ) Johnson County Sun        | ( ) Salina Journal         |
| ( ) Dodge City Daily Globe | ( ) Junction City Daily Union | ( ) Winfield Daily Courier |
| ( ) Emporia Gazette        | ( ) Lawrence Journal World    |                            |
| ( ) Garden City Telegram   |                               |                            |

**EDITORIAL**

# Looks bad

**K**ansas House Speaker Mike O'Neal, R-Hutchinson, technically might have standing to bring a lawsuit against the state over fee fund sweeps, but that doesn't mean he should be the plaintiffs' attorney. Just because he might be technically right doesn't mean it looks good.

And in reality it just doesn't look right for the speaker of the Kansas House of Representatives to bring suit against the state. Generally, we expect representatives of government, whether of different branches or not, to stand behind their government, not bring lawsuits against it.

And when O'Neal, like other legislators, criticizes the state's public school districts for their legal action against the state, he loses considerable credibility when he essentially is doing the same on another issue. He also has compromised himself when it comes to legislation that affects any of these clients, and he stands to profit personally from this at taxpayers' expense.

And, remember, this isn't just any legislator: O'Neal holds the top position as leader of the House.

Ultimately, it doesn't matter whether O'Neal is right. It looks bad. And O'Neal wasn't the only attorney who could have sued the state on behalf of 17 plaintiffs who were victims of the state sweeping

about \$5 million from their designated funds – among them, the Bank Commissioner Fee Fund, various workers' compensation funds, the Real Estate Fee Fund and the Kansas Corporation Commission Conservation Fee Fund – and diverting them for other state spending obligations.

We think that O'Neal's case has considerable merit. State government – with the approval of the Legislature and the governor – was wrong to raid funds specifically designated for certain beneficiaries and purposes. Former Attorney General Carla Stovall issued just such an opinion, albeit nonbinding.

And O'Neal appears to be right in his contention that he legally may be the plaintiff's attorney in this case. O'Neal not only opposed the appropriations bill that included the fee fund sweeps, but he entered a formal written protest. That, he said, allows him to bring the suit.

O'Neal is a smart man, and he has done his homework on this subject, but he is wrong-headed about his role in this crusade.

O'Neal should not have been the attorney to file this lawsuit. At least one legislator has called for his resignation as speaker. He shouldn't do that. Instead, he should hand off this case to some other private practice attorney with another law firm.

56

3-59

Date: \_\_\_\_\_

*Thurs 2-11-2010*

- |                            |                               |                            |
|----------------------------|-------------------------------|----------------------------|
| ( ) Topeka Capital Journal | ( ) Hays Daily News           | ( ) Leavenworth Times      |
| ( ) Wichita Eagle          | ( ) Hutchinson News           | ( ) Manhattan Mercury      |
| ( ) Kansas City Star       | ( ) Iola Register             | ( ) Olathe Daily News      |
| ( ) Chanute Tribune        | ( ) Johnson County Sun        | ( ) Salina Journal         |
| ( ) Dodge City Daily Globe | ( ) Junction City Daily Union | ( ) Winfield Daily Courier |
| ( ) Emporia Gazette        | ( ) Lawrence Journal World    |                            |
| ( ) Garden City Telegram   |                               |                            |

**BRIEF**

**Lawmakers to speak at 'legislative coffees'**

GARDEN CITY - The chamber's "Legislative Coffees" have been scheduled on the following Saturday's: Feb. 13, March 6, and April 17.

At the events, area legislators will talk about the latest issues in the state government and their potential impact and answer questions from the public.

The first and third coffees will be at the Wheatland's Conference Center, 1408 E. Fulton at 10 a.m. The March meeting will be at Garden City Community College, in conjunction with "Southwest Kansas Economic Outlook Conference."

Sens. Stephen Morris and Tim Huelskamp, Reps. Jeff Whitham, Carl Holmes, Melvin Neufeld, Larry Powell, Don Hine-man, Pat George, John Faber, Jim Morrison, Gary Hayzlett, Bill Light and Mitch Holmes have all been invited.

Call the chamber at (620) 276-3264 for more information.

**WESTERN FRONT**

**Backward budgeting**

I am confused about the word "budget." I thought a budget was a plan to show how a given income would be spent - no more income, no more spending. Income equals spending and spending equals income.

But our state and national "budgets" seem backwards. They list planned expenses first then search for the needed income. If there is not enough income, do these "budgets" reduce spending to match income?

No household, no business, no city, no state nor national government can function for long when spending exceeds income. They cease to exist.

It is said that deficit problems can be pushed onto the next generation to solve. What sacrifices in lifestyle will they need to make? Most spending items above income are useful; some are merely desirable. But if they are beyond income, they should be omitted or postponed.

Do we want to be responsible or irresponsible with our money? Can we be examples for good or must we be examples to pity or ridicule?

**KAREN GANOUNG**  
Hoisington

**READER OPINIONS FROM HUTCHNEWS.COM**

- Now is the time for local Republicans to take O'Neal down. He has ticked off everyone and a good candidate could smack him in the primary.
- Basically O'Neal is attempting to form an alliance with the judicial branch to force the Legislature to take orders from him. O'Neal is providing an example of why we need term limits for state legislators. He also demonstrates why we need to raise the pay of legislators and then prohibit them from having other sources of income that create a potential conflict of-interest.
- ... What if the state calls him to the witness stand?

*58*  
*3-60*

## **hutchnews.com**

### **A sweeping controversy**

#### **Lawsuit against state fraught with ethical and financial ramifications**

**By Mary Clarkin - The Hutchinson News - [mclarkin@hutchnews.com](mailto:mclarkin@hutchnews.com)**

**Speedy Cash knows what it's like when money vanishes.**

**The lender's corporate parent is licensed by the state of Kansas and pays fees to the state bank commissioner. That cost rose after the 2009 state legislative session, when lawmakers authorized shifting money from the Bank Commissioner Fee Fund to help the state's general fund, which supplies aid to schools, social services and other operations.**

**Money similarly escaped from the Workers Compensation Fund. And the Real Estate Commission Fee fund. And the Kansas Corporation Commission's Conservation Fee Fund.**

**Enough, said Speaker of the House Mike O'Neal, R-Hutchinson.**

**On Jan. 21, O'Neal, in his role as an attorney at Gilliland and Hayes, Hutchinson, filed a lawsuit against the state on behalf of 17 plaintiffs affected by fee fund sweeps. The petition urged the court to declare the sweeps unconstitutional and restore \$5,057,688 to the four specific funds identified in the lawsuit.**

**O'Neal's role as litigator makes it a high-profile case. Shawnee County District Court's decision could have long-lasting impact.**

#### **Closing the gap**

**Across the country, as 2008 ended and 2009 began, an economic recession worsened. Washington had bailed out Wall Street and automakers, but more people were losing jobs. In Kansas, the state wasn't receiving enough money to support its current budget. The revenue shortfall for that budget year and the next year exceeded \$900 million.**

**Then-Gov. Kathleen Sebelius, a Democrat, did not recommend general tax increases. Rather, she presented a strategy in January 2009 that called for various spending cuts, funding delays or money transfers to balance the budget for that year and to provide for a balanced budget in the fiscal year starting July 1, 2009. Her proposed fee fund sweeps over the two budgets amounted to more than \$30 million, O'Neal's lawsuit notes.**

**The appropriations bill the Republican-dominated Legislature passed in May 2009 included the "sweep monies," although they were not as great as Sebelius had proposed. By the time the Legislature approved the bill - O'Neal opposed it - Sebelius was Secretary of the U.S. Department of Health and Human Services. Gov. Mark Parkinson, a Democrat, signed the measure.**

**Votes in the Senate and House had been tight on the appropriations bill, and O'Neal was not the only one who found the sweeps offensive. The Senate Journal on the day of the Senate's**

3-61



the only one who found the sweeps offensive. The Senate Journal on the day of the Senate's vote carried a condemnation by State Sen. Terry Bruce, R-Hutchinson:

**"Fees supporting these agencies are collected from the industry which the agency regulates for a specific purpose. Raiding those funds is a violation of the trust between the fee-payer and the Kansas Legislature."**

#### **Stovall's opinion**

Fee fund sweeps were happening - and controversial - before Sebelius became governor. In 2002, then-Attorney Gen. Carla Stovall issued an opinion on transferring money from special funds into the general fund. State Rep. Carl Holmes, R-Liberal, was one of the legislators who had requested the opinion after the Legislature had ordered some fund transfers, including from the Bank Commissioner Fee Fund and the Workers Compensation Fee Fund.

The state has police power authority and taxing authority, but if the Legislature actually is taking the money for general revenue-raising purposes, the funds must be reimbursed, the opinion said.

Stovall concluded that if a successful challenge to the sweeps was made in court, the state would likely have to repay money to the funds.

"To avoid ending up in this position, we would encourage the Legislature to study the issue of indirect costs and ensure that transfer of money from fee-funded agencies into the general fund are not made arbitrarily," Stovall wrote.

Attorney general opinions are non-binding and lack the force of a court ruling.

#### **What they want**

The defendant in O'Neal's lawsuit is the state of Kansas' Department of Administration's Division of Accounts and Reports, which carries out budgetary directions.

The plaintiffs hope the lawsuit will be granted class-action status that would benefit all parties affected, even those who are not part of the suit.

They also want the court to declare the fee sweep authorized by the 2009 appropriations bill unconstitutional and void.

They request the fee fund transfers be reversed and restored. They further seek injunctive relief from any additional unauthorized fee sweeps during the 2010 legislative session or beyond.

Lastly, they ask for an order "allowing reasonable attorney's fees to be paid from the respective funds restored, and for such other and future relief as the court may deem just and equitable."

According to O'Neal, he didn't go out and round up clients. The first-named plaintiff in the suit, Kansas Building Industry Workers Compensation Fund, "has been a client of mine for years and years, and was the first to approach me about challenging the fee sweeps," O'Neal wrote in a response.

wrote in a response.

QC Holdings Companies, which owns Quik Cash lending stores, witnessed its license renewal expenses soar from \$300 to \$3,000 per location, because of the fee sweep, and its own internal legal team reviewed the authority of the sweeps, said Tom Linafelt, director of communications for QC Holdings. The firm opted to be part of the O'Neal suit.

Gilliland and Hayes is a reputable firm, and O'Neal is a reputable attorney, Linafelt said, so from a cost standpoint, it made economic sense to be part of a class-action case instead of an individual case.

The Kansas Workers Risk Cooperative for Counties board gave the go-ahead to join the suit, said the agency's deputy administrator and staff counsel Dortha Bird, adding the board considered the state's action "inappropriate."

The list of plaintiffs could lengthen. Just before O'Neal filed the suit in Shawnee County District Court, Barton County Counselor/Administrator Richard Boeckman learned about it and mentioned a sweep that affected the county mineral production tax fund. Boeckman is encouraging other counties to consider being part of an amended petition, which O'Neal has indicated he would file.

Galt Ventures of Kansas LLC, which owns Speedy Cash, pointed out in a statement that there "appears to be broad-based opposition" to the fee sweeps "and the general consensus that it was illegal."

**Choose one**

O'Neal pointed out that he voted against the 2009 appropriations bill and he entered a formal written protest in the House against the sweeps - allowing him, under the law, to represent clients in the suit against the state over the legislation.

House Minority Leader Paul Davis, D-Lawrence, also an attorney, did not argue those fine points but looked at the overall picture - and saw "an appearance of impropriety that does not reflect well on the Legislature as a whole and on the Speaker."

Davis did not consider it enough for O'Neal to remove himself as litigator. Another law firm - not Gilliland and Hayes - should be representing a case against the state, in Davis' view.

"The issue at hand really is the apparent conflict of interest that seems to exist in being Speaker and representing a group of lobbyists, essentially, against the state of Kansas," Davis said.

A check of O'Neal's campaign contributors in 2008 and 2009 revealed that political action committees related to more than 40 percent of the plaintiffs have sent contributions.

Davis said he heard rumors in the summer and fall of 2009 that O'Neal might litigate a case against the state, but he said he thought O'Neal "would be smart enough to know that would not be perceived very well,"

O'Neal on Friday said he had no second thoughts about taking the case.

3-63

## **Incredulous**

**Hays USD 489 Superintendent Fred Kaufman, president of Schools for Fair Funding, which has asked the Kansas Supreme Court to reopen a school finance order, was incredulous when he read O'Neal was representing clients in a funding lawsuit against the state.**

**"For a legislator to do that?" Kaufman asked.**

**Fair Funding has drawn criticism for its litigious history and its new attempt to secure more state aid, but O'Neal's suit "has really taken wind out of the sails" of House members who objected to Fair Funding's approach, Minority Leader Davis said.**

**Neither Kaufman nor O'Neal views their respective legal challenges as the same.**

**"I think it's my obligation. If the Constitution guarantees a kind of education and the Supreme Court has upheld it, and I don't do something to see that children get it, I'm not doing my job," Kaufman said.**

**While schools are using tax dollars to sue for more taxpayer money, O'Neal said, "We are suing to recover private funds paid into trust funds created for a specific regulatory purpose that were taken by the state and transferred."**

**O'Neal also said the case will take little of his time during the session and is but one of many cases he is handling for various clients.**

**"I am charging only for my actual time in the case and at a rate less than my standard rate," O'Neal also noted.**

## **No change**

**In January, Gov. Parkinson presented a budget proposal for the fiscal year starting in July 2010 that addressed a projected \$400 million revenue shortfall.**

**O'Neal's lawsuit says that proposed budget calls for additional fee fund sweeps totaling \$13.7 million - including another transfer for the Workers Compensation Fee Fund.**

**Even though the suit seeks to halt those sweeps, Parkinson is not retreating.**

**The governor proposed a balanced budget and the "threat of a lawsuit does not affect his decisions," a statement from Parkinson's office said.**

**"It's not time for us to be filing lawsuits against each other," Parkinson also said.**

**O'Neal, a nearly 25-year veteran of the House, said most people criticizing his involvement supported the sweeps.**

**"Whistleblowers have historically been criticized by insiders trying to protect the status quo," O'Neal said.**

Date: \_\_\_\_\_

Sat. 2.13.10

- |                            |                     |                       |
|----------------------------|---------------------|-----------------------|
| ( ) Topeka Capital Journal | ( ) Hays Daily News | ( ) Leavenworth Times |
| ( ) Wichita Eagle          | ( ) Hutchinson News | ( ) Manhattan Mercury |
| ( ) Kansas City Star       | ( ) Iola Register   | ( ) Olathe Daily News |

Capitol Watch

# THE STAR'S EDITORIAL Statehouse solution:

## Let's hunt lions!

**N**ot bad, as gestures go Members of the Kansas House this week approved a pay cut for themselves, judges, Cabinet secretaries and other top state officials. The reduction of 5 percent on salaries through the end of the fiscal year in June amounts to a 1.7 percent overall pay cut for these officials and would save the state \$1.5 million.

It's a good gesture, and a nice recognition of the pain still to come this year. Despite making \$1 billion in cuts to the current budget, legislators must trim an additional \$40 million.

And that doesn't even begin to get at the \$400 million more that will have to be sliced from next year's budget, unless revenues increase.

So one more time: Legislators, tackle the proposed bills that would reduce the massive number of tax exemptions Kansas has handed out through the years. These exemptions amount to taxpayer subsidies, and it's clear the state tax burden must be spread around.

### Meaningless meddling in Missouri (continued)

Having already given Congress a piece of its mind about health care mandates, the Missouri legislature this week ordered lawmakers in Washington to balance the federal budget.

And a state Senate committee spent a couple of hours debating competing resolutions about whether the military should retain the "don't ask, don't tell" policy for gay servicemen and servicewomen.

Winter-worn Washington would undoubtedly welcome the hot air generated by Missouri lawmakers' fixation with all things federal, but we'd prefer that state lawmakers get serious about ethics reform.

### Still waiting...

For Missouri House Speaker Ron Richard to allow a hearing on a bill that would provide valuable protections for consumers who apply for payday loans. Richard's office did not return phone calls this week to explain the foot-dragging.

Nearly all Democrats are co-sponsoring the reform legislation, a notable exception being Curt Dougherty of Independence. Surely at least one Republican is willing to sign on to such a worthy cause, yes?

### Step away from the lawsuit, Mr. Speaker

Last year, Kansas House Speaker Mike O'Neal, a Hutchinson Republican, unsuccessfully opposed using specific accounts in the general fund to pay for schools and more. This year, he's the lead attorney in a lawsuit saying the state didn't have the right to use that money. Democrats think his actions scream conflict of interest.

O'Neal has said he's sleeping well at night, content in the knowledge that he followed Kansas rules and law.

"We don't give up our jobs to come serve," he said. "I didn't forfeit the right to be an attorney by being in the Legislature."

But given O'Neal's leadership role, this lawsuit makes him look, at the least, petty and a sore loser. Suing the state over a decision with which he disagreed, but of which he was a part, should be beneath the dignity of a speaker.

### Maybe you can be too safe

In October, Kansas wildlife officials confirmed the first living mountain lion in the state since 1904. Monday, the Legislature was urged to approve a bill making it legal to hunt the creatures. Surely you saw that one coming.

While the official wild lion count in Kansas is one, no one is sure if he's still around.

Wildlife officials point out lions already can be shot to protect land or life, farm or family. Still, Rep. Mitch Holmes, a Republican from St. John, wants legislators to approve an open-ended, no-limits season.

His law also protects Kansans from wolves. Wildlife officials note there haven't even been rumors of wolves in the state (they are endangered and federally protected) in 40 years.

No word yet on whether Holmes will add Bengal tigers and great white sharks to the open season list.

21

Date: SUN 2-14-10

- Topeka Capital Journal
- Wichita Eagle
- Kansas City Star
- Chanute Tribune
- Dodge City Daily Globe
- Emporia Gazette
- Garden City Telegram
- Hays Daily News
- Hutchinson News
- Iola Register
- Johnson County Sun
- Junction City Daily Union
- Lawrence Journal World
- Leavenworth Times
- Manhattan Mercury
- Olathe Daily News
- Salina Journal
- Winfield Daily Courier

# Ethics 101: The House speaker test

If you've ever wondered if you have the stuff to be the Kansas speaker of the House, here's your chance.

Just take this short ethics test and see how you score. In each case, the first answer is worth zero points, the second answer is worth one point and the third answer is worth two points. Good luck.

### Scenario No. 1

— You're driving on a rainy night and see three people at a bus stop — a frail and elderly woman, an old friend who once saved your life and an attractive woman you believe could be your dream partner. Your car only has room for one passenger. What do you do?

1. Give the elderly woman a ride.
2. Hand the keys to your old friend and ask him to give the elderly woman a ride while you get to know your dream partner.
3. Grab the looker and make like Dale Earnhardt. Hey, it's not illegal.

Scenario No. 2: You've bought a luxury condo that is more house than you need, and now your

budget is tight. To your surprise, you discover that you've become eligible for funding from a mortgage-relief program. But there's a catch: Even though you can technically receive the funding, it was intended for people who are in danger of

defaulting on longstanding loans. What do you do?

1. Decline the funding, since there's only so much of it and it wasn't meant to bail out people who made bad choices on new homes.
2. Take the funding, but adopt a strict budget that will allow you to get back on your feet financially and quit accepting the relief money after only a few months.
3. Wrap both hands around that gravy boat and lap out as much as you possibly can. Hey, it's not illegal.

Scenario No. 3: Someone tells

you a secret that could damage a celebrity's career. What do you do?

1. Ignore it.
2. Kindly but firmly tell the person who gives you the information it's not nice to spread rumors, but commit the secret to memory just in case it could be useful later.
3. Call the Enquirer and start taking bids to buy the story. Hey, it's not illegal.

Scenario No. 4: You're an attorney who's serving as speaker of the House, and you're approached to represent several special-interest groups seeking to sue the state over a budgetary decision approved last year by the Legislature. The groups, a number of which have given you campaign donations in the past, lost \$5 million when lawmakers funneled a special fund fee toward easing the budget deficit. They want it back, and they want you to get it. What do you do?

1. Suggest to the groups the name of another attorney from a law firm other than your own, citing the need to avoid any appear-

ance of a conflict of interest.

2. Defer to another member of your law firm to handle the case.
3. Tell the groups to saddle up and let's ride. When questioned, whip out a statute book and note that legislators are allowed to sue as long as they recorded their opposition to the issue at hand when it was voted on. Hey, it's not illegal.

### Scoring:

Zero to two points — Sorry, Mother Theresa, but the Legislature isn't the place for you.

Three to five points — You show some potential, but your answers indicate you think there's a difference between ethics and the letter of the law. In this case, that's apparently a drawback.

Six to eight points — Start practicing banging the gavel, Mr. or Ms. Future Speaker.

*Ric Anderson, who will make a pre-emptive response to any criticism from the speaker by saying he's not doing anything illegal, can be reached at (785) 295-1282 or ric.anderson@cjonline.com.*

## KDHE gets funding

### The Capital-Journal

The U.S. Department of Health and Human Services announced Friday it had awarded more than \$9 million in Recovery Act funding to the Kansas Health Information Exchange Project to help facilitate health information exchange at the state level.

The Kansas Department of Health and Environment is the state designee for health information technology and is facilitating the creation of strategic and operational plans for a

statewide infrastructure.

"This announcement is great news for Kansas, as it will bring countless opportunities in terms of creating jobs, advancing technology and reducing our overall health care costs," Gov. Mark Parkinson said in a news release.

The goal of health information exchange is to allow health care providers and stakeholders to share data for coordinating patient care and to support public entities in improving health for the population.

15  
3-66

O'Neal should go

**Mike O'Neal needs to go. He does not represent the best interests of his constituents nor does he support public education like he should. This legislative session, he has not helped to find solutions, rather his idea is just to keep cutting and cutting. He is out of touch with reality. He refuses to support not only education, but also other social services. In terms of education, he does not want to follow the Kansas State Constitution, which requires education be funded.**

**A few years ago, he even requested legislative audits be done to see what an appropriate cost per student would be. When the one study showed they weren't funding it enough, he was part of the group that wanted a second study. That study, too, said the state of Kansas wasn't providing enough.**

**Now he wants to stop the Schools for Fair Funding from suing the state to do what they should be doing in the first place, by backing legislation that will prevent that from happening. But oh no, he's doing basically the same thing. He's involved in a lawsuit to sue the state while he is the current speaker of the House.**

**Hmmmmm, that makes it OK, right, Mike?**

**I have most recently been a registered Republican, now an independent conservative, but O'Neal needs to be voted out of office. Not just because of what's going on right now, but mainly because he has a total disconnect with the people of the state and the issues facing us right now. I challenge all Reno County voters - don't just vote for him because he's a Republican, stop being line-item voters. Let's get someone up there that represents us, the common hard-working man, not the aristocratic upper class who thumbs their nose at us because "we don't understand government." KYLE GREEN**

**Winfield**

Date: \_\_\_\_\_

*Mon. 2.15.10*

- |   |  |   |
|---|--|---|
| <input type="checkbox"/> Topeka Capital Journal | <input type="checkbox"/> Hays Daily News                   | <input type="checkbox"/> Leavenworth Times      |
| <input type="checkbox"/> Wichita Eagle          | <input type="checkbox"/> Hutchinson News                   | <input type="checkbox"/> Manhattan Mercury      |
| <input type="checkbox"/> Kansas City Star       | <input type="checkbox"/> Iola Register                     | <input type="checkbox"/> Olathe Daily News      |
| <input type="checkbox"/> Chanute Tribune        | <input type="checkbox"/> Johnson County Sun                | <input type="checkbox"/> Salina Journal         |
| <input type="checkbox"/> Dodge City Daily Globe | <input type="checkbox"/> Junction City Daily Union         | <input type="checkbox"/> Winfield Daily Courier |
| <input type="checkbox"/> Emporia Gazette        | <input checked="" type="checkbox"/> Lawrence Journal World |   |
| <input type="checkbox"/> Garden City Telegram   |  |   |

### PUBLIC FORUM

#### All children?

To the editor:

In the debate over school closings, I have heard people say, "I don't want to close any schools, but closures must be considered if we want do what's best for all children." I wonder, though, just who is included in "all children" when the schools being considered for closure are the ones working to educate the most vulnerable children.

Citizens who have been as fortunate as I have need to stop asking the less fortunate to shoulder the lion's share of every burden. It's about time we start being the adults we claim to be and accept a larger sacrifice out of a concern for the children of citizens who are less fortunate than ourselves. No matter what decisions are made, I know my children will do just fine. I also know that I cannot be truly content in knowing this, while the less privileged children

of my fellow citizens sacrifice the most.

Gregg Ventello,  
Lawrence

#### O'Neal's choice

To the editor:

For House Speaker/litigator Mike O'Neal: Can you act in a truly virtuous manner in your public duties and private business by avoiding issues under litigation you conduct for private clients against Kansas while leading the Kansas House of Representatives? I say no.

Expenses defending litigation place you as an adversary to the Kansas citizenry already beleaguered by losses of government services. As a litigator against Kansas you are not defending the public good, rather you're a champion for narrow (meritorious or not) interests of private clients. If true to your clients, as legal ethics demand, you're against Kansas.

My ethical compass, calibrated

by 37 years of government service, tells me your choice of clients conflicts with Kansas' public good, impairs public trust, and wastes appropriations. Consider the following points from the Markkula Center for Applied Ethics at Santa Clara University. First, "Even the appearance of impropriety undermines the public's faith that the process is fair." Second, "Aristotle would have argued that leaders should have true virtue, where all parts of the soul are pulling in the same direction; that is, toward the good."

As House speaker, you control all House processes as its presiding officer, lead the majority caucus and quarterback all the legislative committee chairs. In this high position of public trust, you must defend the public good at all times. In the future, you must decline to represent plaintiffs with claims against Kansas or step down.

Michael K. Kelly,  
Lawrence

74

3-68

Date: \_\_\_\_\_

Tues 2-16-10

- ( ) Topeka Capital Journal
- ( ) Wichita Eagle
- ( ) Kansas City Star
- ( ) Chanute Tribune
- ( ) Dodge City Daily Globe

- ( ) Hays Daily News
- ( ) Hutchinson News
- ( ) Iola Register
- ( ) Johnson County Sun
- ( ) Junction City Daily Union
- ( ) Lawrence Journal World

- ( ) Leavenworth Times
- ( ) Manhattan Mercury
- ( ) Olathe Daily News
- ( ) Salina Journal
- ( ) Winfield Daily Courier

## PUBLIC FORUM

### Real debate

To the editor:

Lawrence citizens have repeatedly asked the school board for comprehensive budget information. Only summary reports are published on the district Web site, and the budget documents available at the district office are not current and contain numerous significant entries with vague descriptions like "miscellaneous."

Why is it so difficult to get useful information about our school budget? Other cities, including Manhattan, publish the complete budget online, and involve the public integrally in the analysis and planning.

School board members seem to believe they are operating openly and with transparency because they permit citizens to speak at public meetings. Our elected officials don't seem to get it yet. We are not just requesting an audience; we want a seat at the table.

The budget is tight, to be sure. But that does not justify compromising our democratic ideals or giving up on the things we hold dear. Even in times of crisis, openness should not give way to opacity, and expediency is never a substitute for consensus. Until the school board meets minimum standards of transparency, the people of Lawrence should presume there are ways to

address current fiscal challenges without resorting to draconian measures like shuttering schools.

The decisions we make today will profoundly affect the fabric of our community for generations to come. So instead of giving us "false choices" born out of haste, the district should open its books to the public and engage us in a real debate about OUR priorities for our schools and neighborhoods.

Stacey Wohlford,  
Lawrence

### Sign of spring

To the editor:

In a town where it is said basketball is a religion, it's often difficult for those of us raised in another faith. In the world of my childhood, "ball" had only one meaning: baseball.

An article in the paper recently about how to overcome the winter blahs suggested traveling south or west to enjoy spring training. That is completely unnecessary! In Lawrence, we have the privilege of being able to watch the boys of summer at Kansas University starting this Friday.

Yeah, it may be a bit nippy on those aluminum bleachers. It's worth it. I've told my kids and now my grandson year after year at the home opener sitting there with blankets over our coats, hats, gloves, and scarves, "No

matter what the calendar or thermometer says, when you are here watching baseball you can smell summer coming." Who doesn't need that after the winter we have endured?

By the time the big leaguers get started, we've already enjoyed half a season of play. We still remember 1993 when hoops followers were thrust into mourning during Final Four play while we celebrated a home win against a highly ranked team the same weekend. Go ahead. Go sit in the nice warm fieldhouse. As for me and my grandson (baseball weather gods permitting), we'll join a few other hearty souls across the parking lot at the ballpark and may even sing a chorus of John Fogerty's "We're born again. There's new grass of the field."

Sue Reiske,  
Lawrence

### O'Neal is wrong

To the editor:

I have to take exception to Mike Hoeflich's assertion that Kansas House Speaker Mike O'Neal did not step over the line when he represented plaintiffs in a lawsuit against the state of Kansas. O'Neal may not be "of counsel" for the state but he is a lawyer and he is a public official who is sworn to represent the best interest of the people of Kansas.

To suggest that for him to file a lawsuit against the people of Kansas is not a conflict of interest defies logic. It may not violate the letter of the law, but it plainly flies in the face of governmental ethic. In my view, the Legislature has a statutory and moral obligation to properly fund public education by closing the tax loopholes that have been doled out to private special interest in the past. Maybe Speaker O'Neal doesn't consider it a conflict of interest because he is working for that same private interest both outside and inside the Legislature. Mr. Hoeflich can call it anything he chooses, but I call it wrong.

Tim Hamill,  
Lawrence

78



Date: \_\_\_\_\_

Wed 2-17-10

- |                                     |                        |     |                           |     |                        |
|-------------------------------------|------------------------|-----|---------------------------|-----|------------------------|
| <input checked="" type="checkbox"/> | Topeka Capital Journal | ( ) | Hays Daily News           | ( ) | Leavenworth Times      |
| ( )                                 | Wichita Eagle          | ( ) | Hutchinson News           | ( ) | Manhattan Mercury      |
| ( )                                 | Kansas City Star       | ( ) | Iola Register             | ( ) | Olathe Daily News      |
| ( )                                 | Chanute Tribune        | ( ) | Johnson County Sun        | ( ) | Salina Journal         |
| ( )                                 | Dodge City Daily Globe | ( ) | Junction City Daily Union | ( ) | Winfield Daily Courier |
| ( )                                 | Emporia Gazette        | ( ) | Lawrence Journal World    |     |                        |
| ( )                                 | Garden City Telegram   |     |                           |     |                        |

## OTHER VOICES

*The Hutchinson News, Feb. 8:*

Kansas House Speaker Mike O'Neal, R-Hutchinson, technically might have standing to bring a lawsuit against the state over fee fund sweeps, but that doesn't mean he should be the plaintiffs' attorney. Just because he might be technically right doesn't mean it looks good.

And in reality, it just doesn't look right for the speaker of the Kansas House of Representatives to bring suit against the state. Generally, we expect representatives of government, whether of different branches or not, to stand behind their government, not bring lawsuits against it.

And when O'Neal, like other legislators, criticizes the state's public school districts for their legal action against the state, he loses considerable credibility when he essentially is doing the same on another issue. He also has compromised himself when it comes to legislation that affects any of these clients, and he stands to profit personally from this at taxpayers' expense.

And, remember, this isn't just any legislator. O'Neal holds the top position as leader of the House.

Ultimately, it doesn't matter whether O'Neal is right. It looks bad. And O'Neal wasn't the only attorney who could have sued the state on behalf of 17 plaintiffs who were victims of the state sweeping about

\$5 million from their designated funds — among them, the Bank Commissioner Fee Fund, various workers compensation funds, the Real Estate Fee Fund and the Kansas Corporation Commission Conservation Fee Fund — and diverting them for other state spending obligations.

We think that O'Neal's case has considerable merit. State government — with the approval of the Legislature and the governor — was wrong to raid funds specifically designated for certain beneficiaries and purposes. Former Attorney General Carla Stovall issued just such an opinion, albeit nonbinding.

And O'Neal appears to be right in his contention that he legally may be the plaintiff's attorney in this case. O'Neal not only opposed the appropriations bill that included the fee fund sweeps, but he entered a formal written protest. That, he said, allows him to bring the suit.

O'Neal is a smart man, and he has done his homework on this subject, but he is wrong-headed about his role in this crusade.

O'Neal should not have been the attorney to file this lawsuit. At least one legislator has called for his resignation as speaker. He shouldn't do that. Instead, he should hand off this case to some other private practice attorney with another law firm.

Date: Wed 2-17-10

- |                            |                               |                            |
|----------------------------|-------------------------------|----------------------------|
| ( ) Topeka Capital Journal | ( ) Hays Daily News           | ( ) Leavenworth Times      |
| ( ) Wichita Eagle          | ( ) Hutchinson News           | ( ) Manhattan Mercury      |
| ( ) Kansas City Star       | ( ) Iola Register             | ( ) Olathe Daily News      |
| ( ) Chanute Tribune        | ( ) Johnson County Sun        | ( ) Salina Journal         |
| ( ) Dodge City Daily Globe | ( ) Junction City Daily Union | ( ) Winfield Daily Courier |
| ( ) Emporia Gazette        | ( ) Lawrence Journal World    |                            |
| ( ) Garden City Telegram   |                               |                            |

**WESTERN FRONT**

**Unbalanced**

I haven't voted for a Kansas Republican since Bill Graves. Graves kept it "packed high and tight," but he wasn't unreasonable in his moderate approach. Many Kansas Republicans currently in power have a strikingly different approach to government. Some Republicans today have found a simple formula to get elected, promising not to raise taxes. Republicans in the state Legislature have given huge tax breaks to companies like Koch Oil. These tax breaks were supposed to make the economy stronger. The House leadership seems to have adopted the philosophy of cut taxes when times are good and cut expenses when times are bad.

This simple formula hasn't worked. The economy is bad and Republicans in the Legislature are trapped in what they designed. They saved nothing for a rainy day fund during better economic times and have cut off their own source of revenue. Their answer to the embarrassing situation they have created is to cut the budget. Led by Mike O'Neal, a core group of Republicans have cut education, nursing homes, police and many other state agencies.

There seems to be no end to the cuts, many of them coming last year, this year, and more proposed for next year.

These cuts are going to have dramatic effects over time. These include schools with entire pro-

grams lost and inadequate staffing to meet students' needs. Andover High School has already released some non-tenured teachers. Other schools around the state have already cut staff positions. Nursing homes, for example, will have less money and therefore less staff in areas where they are stretched thin already. Many other state agencies are being affected and are finding it hard to provide services.

In all areas that have been drastically cut, it will be hard to attract and retain qualified people. Many other examples exist in state-funded fields of work.

It's time to vote for candidates who represent a more balanced approach to state funding.

**W.L. CROSS  
Hutchinson**

**O'Neal should go**

Mike O'Neal needs to go. He does not represent the best interests of his constituents nor does he support public education like he should. This legislative session, he has not helped to find solutions, rather his idea is just to keep cutting and cutting. He is out of touch with reality. He refuses to support not only education, but also other social services. In terms of education, he does not want to follow the Kansas State Constitution, which

requires education be funded.

A few years ago, he even requested legislative audits be done to see what an appropriate cost per student would be. When the one study showed they weren't funding it enough, he was part of the group that wanted a second study. That study, too, said the state of Kansas wasn't providing enough.

Now he wants to stop the Schools for Fair Funding from suing the state to do what they should be doing in the first place, by backing legislation that will prevent that from happening. But oh no, he's doing basically the same thing. He's involved in a lawsuit to sue the state while he is the current speaker of the House.

Hmmmm, that makes it OK, right, Mike?

I have most recently been a registered Republican, now an independent conservative, but O'Neal needs to be voted out of office. Not just because of what's going on right now, but mainly because he has a total disconnect with the people of the state and the issues facing us right now. I challenge all, Reno County voters - don't just vote for him because he's a Republican, stop being line-item voters. Let's get someone up there that represents us, the common hard-working man, not the aristocratic upper class who thumbs their nose at us because "we don't understand government."

**KYLE GREEN  
Winfield**

57

3-71

Date: \_\_\_\_\_

*Fri 2-19-18*

- |                            |                               |                            |
|----------------------------|-------------------------------|----------------------------|
| ( ) Topeka Capital Journal | ( ) Hays Daily News           | ( ) Leavenworth Times      |
| ( ) Wichita Eagle          | ( ) Hutchinson News           | ( ) Manhattan Mercury      |
| ( ) Kansas City Star       | ( ) Iola Register             | ( ) Olathe Daily News      |
| ( ) Chanute Tribune        | ( ) Johnson County Sun        | ( ) Salina Journal         |
| ( ) Dodge City Daily Globe | ( ) Junction City Daily Union | ( ) Winfield Daily Courier |
| ( ) Emporia Gazette        | ( ) Lawrence Journal World    |                            |
| ( ) Garden City Telegram   |                               |                            |

**WESTERN FRONT**

**Part-time rep**

Apparently our duly elected Congressman Mike O'Neal is really only a part-time state representative. He is free to pursue other adventures that pertain more to his law business than to his responsibilities as a Congressman.

He has embarked on a business pursuit that involves his law firm against the very state government that he works for in his other pursuit, politics. He has chosen to represent several firms in a lawsuit against the state of Kansas. So it seems that Mr. O'Neal is really only a part-time Congressman. And when he is wearing his attorney hat, he takes off his Congressman hat. Let's hope he doesn't forget which hat he is wearing when he serves the people of Kansas.

The fact is, we the people are not receiving his "full-time" attention. Yet he receives full-time pay. And what about conflict of interest? Can he really separate the two issues? I don't think so. Just imagine, Mr. O'Neal says he is going to separate his law business from his responsibility as a representative of the people. So, he serves two masters. Many would not be able to withstand the temptation to press for legislation that benefits his contributors. Oh, I'm sure his motives are very pure. He only wants to do what is right by the voters, but the instinct to pull in more money for his re-election committee is hard to ignore. Curiously, many of the firms who have decided to be part

of this case are also firms that have contributed to his re-election in the past. According to the Hutchinson News article of Feb. 7, 40 percent of the plaintiffs identified in the lawsuit have sent contributions to Mr. O'Neal. He also stated that he was only charging for his actual time on the case, and at a rate less than his standard rate. So does he "clock out" on his time card for Congressman? Will he be charging his clients "billable hours" while he is supposedly doing the work of Congressman?

**PATRICK CLARK**  
Hutchinson

*29*

*3-72*

Date: Mon 2-22-10

- |  |                               |                            |
|--|-------------------------------|----------------------------|
| <input checked="" type="checkbox"/> Topeka Capital Journal | ( ) Hays Daily News           | ( ) Leavenworth Times      |
| ( ) Wichita Eagle  | ( ) Hutchinson News           | ( ) Manhattan Mercury      |
| ( ) Kansas City Star                                       | ( ) Iola Register             | ( ) Olathe Daily News      |
| ( ) Chanute Tribune  | ( ) Johnson County Sun        | ( ) Salina Journal         |
| ( ) Dodge City Daily Globe                                 | ( ) Junction City Daily Union | ( ) Winfield Daily Courier |

## LETTERS

### Reform essential

We need health care reform now. A healthy society is a productive society. I am a well-educated, experienced IT management professional. I have invasive breast cancer that was misdiagnosed for years when I was working and had health insurance. When I was correctly diagnosed, I sat in a cancer clinic weeping because I was told they would not treat me because I did not have health insurance. Our youngest daughter is studying to be a surgical technologist. She suffers from a severe problem with her back. She cannot afford health insurance so she can be treated. Medicaid refused her coverage because she receives \$450 a month in child support. She is trying to find employment while she goes to school. It appears as if the American people are being held hostage by the insurance terrorists. Surely, members of Congress can put aside their political differences and work to pass health care reform.

**JUDY AMBLER,**  
Olathe

### Pay more now

It's official. The hard right in Kansas has sacrificed common sense on the altar of political ideology. By refusing to consider any form of revenue generation that might be seen as a tax increase, members of the majority party have willfully chosen to turn a blind eye to the consequences of their own inability to act outside of a self-inflicted set of principles so rigid that not even facts can permeate them. This is particularly true in terms of Kansas' public education system, where state spending has the greatest positive economic effect. It's no secret that quality public education raises personal income and increases local employment. The choice of the Republicans, however, runs counter to this logic. Their plan, perhaps owing its genesis to fear of a backlash from organizations like the Kansas Club for Growth, is to resist any effort, other than deeper spending cuts, to balance the state budget. That position forces public schools to shed hundreds of teachers, custodians, secretaries, cooks and bus drivers. This is

compounded by school consolidations, which have increased due to cuts made to public education funding. It seems absurd, but the idea from the right seems to be that increased unemployment, fewer economically viable small Kansas communities and a generation of students who are less prepared academically are good for the state. Without swift and direct opposition to such an absurd agenda, Kansas risks, according to the Kansas Association of School Boards, a population that in the future will be much more likely to live in poverty and require public assistance. The choice is simple — a few extra cents on purchases now or thousands spent in the future to fix problems that we all saw coming.

**RYAN BURROWS,**  
Satanita

### O'Neal's conflict

Ric Anderson's column about House Speaker Mike O'Neal's decision to collect legal fees for representing organizations, which may not all be registered lobbyists but probably run parallel to their function, has won my Dick Snider Grin of the Morning award. However, there was a small omission that would have completed the picture — O'Neal earlier had voted for precisely the same kind of dollar sweeping for which he now is suing his part-time employer, the state. I kind of wonder how Speaker of the House of Representatives is a part-time position, but it must be for such a versatile individual. I've held only one executive position in an organization, but I remember a class leader emphasized during orientation training that "appearance of conflict of interest can be as bad as actual conflict of interest"

**HENRY BLAKE,**  
Topeka

### An honorable act

When announcing his decision not to seek re-election to his Senate seat, Sen. Evan Bayh, D-Ind., said, "To put it in words I think most Hoosiers can un-

derstand: I love working for the people of Indiana, I love helping our citizens make the most of their lives, but I do not love Congress."

When congressmen think Congress is worthless, shouldn't we also? I believe we know that Congress is a sham and that politics for the people is a lie. Sen. Bayh knows this and has done what an honorable man would do. He has left this pack of fraternal demi-gods. Doesn't that speak tons? Doesn't that just scream at us? History has shown time and again that when a government is totally ineffective and acts only for the benefit of a few, a revolution occurs. It happened in Rome. It happened in Russia. It happened here in 1776.

I don't want our country in another revolution with guns and deaths, although history says it will come to that. The grass roots solution is to vote "no" on incumbents. The good will be swept out with the bad and many will be hurt by it, but I don't think it will hurt any more than what we have now. We are losing our country. It is time to do something. Vote no and begin again. Sen. Bayh has my support and my vote, although I'm a registered Republican, if he runs for president. Honor isn't dead, but it is rarely exercised. I believe Bayh to be one of the few, and he had to leave to retain his honor. America needs more of this.

**LARRY D. RENBARGER,**  
Topeka

### Call center broken

Lisa Schmidt's letter of Feb. 14 about the difficulty of contacting a real person through the Kansas Department of Labor's Call Center was on the mark. Based on my experience, she correctly described exactly how the phone system does not work! I've had the same experience. I may have spent even more time and effort pushing phone buttons only to be hung up on than she has. What the state has is an inflexible Web site and automated phone hang-up system. This needs a proper fix.

**TOM MANSFIELD,**  
Topeka

15

Date: \_\_\_\_\_

*Wed 2-24-2010*

- |                            |                               |                            |
|----------------------------|-------------------------------|----------------------------|
| ( ) Topeka Capital Journal | ( ) Hays Daily News           | ( ) Leavenworth Times      |
| ( ) Wichita Eagle          | ( ) Hutchinson News           | ( ) Manhattan Mercury      |
| ( ) Kansas City Star       | ( ) Iola Register             | ( ) Olathe Daily News      |
| ( ) Chanute Tribune        | ( ) Johnson County Sun        | ( ) Salina Journal         |
| ( ) Dodge City Daily Globe | ( ) Junction City Daily Union | ( ) Winfield Daily Courier |
| ( ) Emporia Gazette        | ( ) Lawrence Journal World    |                            |
| ( ) Garden City Telegram   |                               |                            |

**WESTERN FRONT**

**Lost trust**

The recent controversy surrounding Speaker Mike O'Neal's conflict of interest stemming from his lawsuit against the state of Kansas is only the first in a long history of ethical lapses.

Last year, while pushing for deep cuts in salaries for state workers, he awarded bonuses to his own staff, including one worth more than \$20,000. Then, while pushing for unpaid furloughs for state employees, he gave the Legislature a paid vacation every Friday.

While O'Neal was a chairman of the Judiciary, his wife became secretary to the committee. Once elected speaker, O'Neal's wife was given the newly created job of "Caucus Liaison" by the House Majority Leader. This happy "coincidence" added \$27,000 to his household income.

Now, Mike O'Neal is representing some of his biggest campaign contributors in a lawsuit against the state. As lead attorney in this suit he stands to line his own pockets, and the pockets of some of his most generous campaign contributors. In an editorial published by in February 1995 The Hutch News declared "O'Neal should never be in a position to be seen as both lawmaker and lawyer lobbyist. The web is too tangled. There must be a way for attorney lawmakers to recuse themselves when they have a direct stake in any matter before

the body of public servants who are so important to the people." These words are no less true today than they were 15 years ago.

O'Neal's staggering arrogance as speaker of the House has become so commonplace and so entrenched that the Republicans who elected him to leadership are no longer shocked by his frequent abuse of power.

While it might have been a mistake for his colleagues to elect him speaker, the bigger mistake is to remain complacent as he abuses the public trust.

**ESTHER WERTH  
Buhler**

Date: \_\_\_\_\_

Wed 3-3-10

- |  |                               |                            |
|--|-------------------------------|----------------------------|
| <input checked="" type="checkbox"/> Topeka Capital Journal | ( ) Hays Daily News           | ( ) Leavenworth Times      |
| ( ) Wichita Eagle  | ( ) Hutchinson News           | ( ) Manhattan Mercury      |
| ( ) Kansas City Star                                       | ( ) Iola Register             | ( ) Olathe Daily News      |
| ( ) Chanute Tribune  | ( ) Johnson County Sun        | ( ) Salina Journal         |
| ( ) Dodge City Daily Globe                                 | ( ) Junction City Daily Union | ( ) Winfield Daily Courier |

## LETTERS

### O'Neal's position

The Legislature is bound by the Kansas Constitution to enact a balanced budget each year, and last year they came up with some creative ways to do it. House Speaker Mike O'Neal, R-Hutchinson, was against these maneuvers.

Now, the speaker, who is an attorney, is representing businesses, trade groups and insurance funds that are suing the state over the way the budget was balanced last year. If the lawsuit is successful, O'Neal's fee could be paid with the taxpayers' money. This alarms me.

There also are questions about his fairness as a legislator when dealing with legislative issues that affect those parties he is representing in the lawsuit.

He claims it's all a political issue being brought by Democrats who want him to resign as speaker or remove himself from the lawsuit. He claims the Democrats cannot cite any rule or law that he has violated. Maybe not, but it sure doesn't look good. My nose doesn't like it either.

O'Neal's own conduct and behavior has made this a political issue, not the Democrats. Then there are the more important issues of conflict of interest, ethics, morality and integrity.

I find it hard to believe he can't see the implications of all this and how it makes him look. Maybe he doesn't care. I don't know how he feels or thinks, but he needs to be held accountable for his actions.

I hope he will do what is right and avoids having a formal ethics complaint filed against him.

**JOHN BAKER,**  
Winfield

### O'Neals good people

I strongly believe that House Speaker Mike O'Neal should leave his position, just as soon as House Minority Leader Paul Davis and House Assistant Minority Leader Jim Ward leave theirs.

And Cindy O'Neal should also resign her job with the Legislature, just as soon as every other legislative spouse working on the taxpayers' dime resigns, too.

Frankly, I don't have a problem with the almost empty Legislature this approach would create, because as Will

Rogers said, no man's life and property is safe as long as the Legislature is in session.

Humor aside, enough of this decade-long obsession Topeka Democrats have with Mike and Cindy O'Neal. They are good, decent people. Leave them alone. Do your own jobs, and let them do theirs.

**ESAM SOHAIL,**  
Wichita

### Pot legislation

I am writing this letter in response to one published recently in The Topeka Capital Journal, in which a physician criticized California and Colorado for passing medical marijuana legislation and called it "stupid."

Apparently, the physician thinks it's not stupid to lose millions in tax revenue, clog our jails and court systems and deny relief to millions of Americans suffering from many different illnesses marijuana has been shown to help.

New studies from research sponsored by the American Medical Association and California Medical Association show marijuana to be effective for many different conditions — especially pain relief. Anyone wishing to look this up can go to [www.opioidmanagement.com](http://www.opioidmanagement.com) or [tinyurl.com/ydqwtd2](http://tinyurl.com/ydqwtd2).

I assume the physician who wrote would tell people seeking pain relief not to use the evil weed but to use good old pharmaceutical pain medicines. Oxycotin, anyone? If the doctor feels the need to be a warrior in the war on drugs, perhaps he needs to take on two drugs that have little or no medical applications and kill more people every year than all illegal drugs combined — alcohol and tobacco.

**BERNARD HEENEY,**  
Topeka

### Obama plan lacking

President Obama released his new health care reform plan ahead of the health care summit. It was almost exactly the same as the Senate bill, which a majority of people dislike — primarily because it does not include a mechanism for controlling health care costs, an end

to insurance company monopolies and, most disheartening, no public option.

A forced mandate to buy private insurance without the choice of a public option is wrong. For months, polling has shown that a mandate with no public option is extremely unpopular.

If you refuse to purchase private health insurance, the IRS will exact a penalty of up to 2.5 percent of your annual income. This effectively turns the IRS into a collection agency for the insurance industry.

A proposed excise tax on the insurance provided by employers could very well make insurance coverage worse. It could cause an employer to switch to a plan with high co-payments, higher deductibles and less coverage — or drop coverage completely.

The inclusion of language from the Stupaks-Pitts or Nelson amendment amounts to a direct assault on a woman's right to manage her own health care.

Of every dollar Americans are forced to spend in premiums, 20 percent can go to insurance industry profit, overhead and compensation for millionaire CEOs.

The bill still includes a sweetheart deal made with pharmaceutical companies that keeps high-tech drugs from becoming available in generic form for more than a decade.

At the end of the day, the amount of money Americans will be forced to pay private insurance companies is almost as much as they pay in federal taxes

**LEIGH BARRETT,**  
Topeka

### Spray park costly

How many potholes could be filled, or streets repaired, for the more than \$400,000 it would cost to build and finance the proposed spray park?

Evidently, there's no lack of money in Topeka, just in every other part of the country. This does not seem like a very good time to spend that kind of money — when some streets in Topeka can barely be navigated without doing damage to a vehicle's suspension.

Just a thought.

**TONY WEBSTER,**  
Topeka

5  
3-75