

MINUTES

House Select Investigative Committee

March 30, 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
Norm Furse, Revisor of Statutes Emeritus
Jason Long, Revisor of Statutes' Office
Gary Deeter, Committee Secretary

Conferees

None

Others Attending

See attached sheet

The Chairman called the meeting to order at 1:35 p.m.

A motion was made, seconded, and passed unanimously to approve the minutes for March 15, March 17, March 18, March 23, and March 29. (Motion by Representative Dillmore and seconded by Representative Holmes)

Representative Holmes made the following motion: Pursuant to Rule 4902 of the House of Representatives and K.S.A. 46-1002, I move that the open meeting of the Select Investigating Committee be recessed for a closed, executive meeting of members of the committee with Norm Furse of the Revisor of Statutes' Office and Gary Deeter, committee secretary, in attendance. The meeting shall be held in the small

conference room (Room 172-W) for the purpose of discussing matters under consideration of the Select Investigating Committee in accordance with House Rule 4902, that the Select Investigating Committee resume the open meeting of the committee in Room 159-S of the Statehouse at 2:15 p.m. and that this motion, if adopted, be recorded in the minutes of the Select Investigating Committee and be maintained as part of the permanent records of the Select Investigating Committee. Seconded by Representative Dillmore, the motion passed unanimously. (Adopted at Topeka, Kansas, on March 30, 2010)

The Committee returned at 2:15 and the following motion was made by Representative Dillmore, seconded by Representative Holmes, and passed unanimously:

Pursuant to Rule 4902 of the House of Representatives and K.S.A. 46-1002, I move that the open meeting of the Select Investigating Committee be recessed for a closed, executive meeting of members of the committee with Norm Furse of the Revisor of Statutes' Office and Gary Deeter, committee secretary, in attendance. The meeting shall be held in the small conference room (Room 172-W) for the purpose of discussing matters under consideration of the Select Investigating Committee in accordance with House Rule 4902, that the Select Investigating Committee resume the open meeting of the committee in Room 159-S of the Statehouse at 3:15 p.m. and that this motion, if adopted, be recorded in the minutes of the Select Investigating Committee and be maintained as part of the permanent records of the Select Investigating Committee. (Adopted at Topeka, Kansas, on March 30, 2010)

The Committee returned at 3:15 p.m. The Chair announced that a report was being prepared and recessed the meeting until 3:35 p.m.

When the Committee reconvened at 3:35 p.m., Representative King read the Committee's findings regarding the Complaint (Attachment 1). The report stated that the Committee found no basis for misconduct, and, based upon that finding, would not recommend reprimand, censure, or expulsion. However, the report acknowledged that the Speaker's actions created an appearance of impropriety and recommended that the Kansas Legislature address certain provisions of K.S.A. 46-233(c) during the 2010 legislative session, and further recommended that the Kansas House of Representatives develop a code of ethics to govern the behavior of legislators in order to protect the integrity of the legislature. The report concluded by dismissing the Complaint filed on March 12, 2010, against the Speaker of the Kansas House of Representatives.

A motion was made, seconded, and passed unanimously to adopt the report. (Motion, Representative King; second, Representative Grant)

The meeting was adjourned at 3:45 p.m. No further meeting was scheduled.

Prepared by Gary Deeter

Approved by the Committee on:

April 5, 2010

HOUSE SELECT INVESTIGATIVE COMMITTEE

GUEST LIST

DATE: March 30, 2010

NAME	REPRESENTING
Martin Hauser	Hawaii's Capital Report
Gene Meyer	KANSAS REPORTER
Jim Lypton	CT
Mike Talia	SELF
Ashley M	House B Staff
Scott Hochschild	Union Journal - World
Stephen Koranda	KPR
Rep. Delia Garcia	Ks House of Representatives
Esbera Clark	Rep. Garcia's Intern
Barbara Ballard	Ks House of Representatives
Marti Crow	Ks House
Nikola W	KS House - Intern - King
DON SCHROEDER	KS House
Ron Gresham	PRO TEM
Alf Pauls	Intern
Jeff Felt	Intern
Emma Eschert	Intern

The House Select Investigating Committee has considered the misconduct complaint against Speaker Mike O'Neal filed pursuant to House Rule 4901 with the Clerk of the House of Representatives on March 12, 2010, and printed on pages 1117 and 1118 of the House Journal on March 15, 2010 ("the Complaint").

Section I

The committee makes the following observations:

1. Pursuant to House Rule 4902, the committee upon completing its hearings and deliberations may dismiss the Complaint or may make recommendations to the full House of Representatives for reprimand, censure, or expulsion.
2. House Rule 2312(b) establishes the precedence of rules of legislative procedure as follows: "(a) Constitutional provisions; (b) statutory provisions; (c) adopted rules; (d) adopted parliamentary authority; (e) custom usage and precedents."
3. This Committee has received two definitions of "misconduct" from the parties to this complaint. One party cited Black's Law Dictionary, which defines misconduct in part as "A transgression of some established and definite rule of action..." The other party cites the American Heritage Dictionary, which defines misconduct in part as "behavior not conforming to prevailing standards or law."
4. The statutory provisions found in K.S.A. 46-233(c) prohibit a legislator from representing "any person in a court proceeding attacking any legislative action 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."
5. The Speaker voted "no" upon the legislative action and declared his objections "on the record" against the legislative action that is the subject of the filed lawsuit.
6. The Complainant has admitted that the Speaker has not violated K.S.A. 46-233(c), any other statute, any rule of the Kansas House of Representatives, or any of the Kansas Rules of Professional Conduct.
7. Under either definition offered by the parties, performing an action specifically permitted by Kansas law cannot constitute misconduct pursuant to Kansas House Rule 4901.

Therefore, the committee makes the following statement:

The Rules of the Kansas House of Representatives establish that statutory provisions take precedence over adopted rules. A statutory provision of the State of Kansas (K.S.A. 46-233(c)) clearly allows a legislator to represent persons in court proceedings if certain actions are taken by the legislator. The statute does not distinguish between legislators in leadership positions (such

Attachment 1
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as Speaker of the House) and those without such leadership posts. The Complainant admits that the Speaker has: (a) satisfied all of the requirements of K.S.A. 46-233(c); and (b) has not violated any other state law, any rule of the Kansas House of Representatives, or any of the Kansas Rules of Professional Conduct. Thus, because his actions were directly allowed by K.S.A. 46-233(c), the House Select Investigating Committee finds that the Speaker did not commit misconduct under Kansas House Rule 4901.

Section II

The committee makes the following additional observations:

1. As currently written, K.S.A. 46-233(c) specifically permits attorney-legislators to challenge in their capacity as private attorneys “any legislative action 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....”
2. We find this statute troubling and fear that it has: (a) led to the appearance of impropriety; and (b) cast a shadow of suspicion and public criticism over the Kansas House of Representatives.
3. Furthermore, as the Complainant noted, the Kansas House lacks a Code of Ethics “to govern the behavior of legislators” and for “protecting the integrity of the Legislature.”

Therefore, the committee makes the following statement:

In the course of its investigation of the Complaint, the House Select Investigating Committee has noted two provisions or omissions in Kansas law and the House rules that merit further consideration.

First, we find that K.S.A. 46-233(c), as currently written, allows conduct by legislator-attorneys in the Kansas House that creates an appearance of impropriety and negatively impacts the public reputation of the Kansas House. As such, we recommend that the 2010 Kansas Legislature amend K.S.A. 46-233(c) to remove the exception in the subsection that allowed the lawsuit at issue in this Complaint. We believe that the 2010 Kansas Legislature should strike the following words from K.S.A. 46-233(c) “unless such legislator voted no upon the enactment of the measure and declared on the record, during such term, that such legislation was unconstitutional.”

Second, we strongly urge that the 2011 Kansas Legislature (or an interim committee of the 2010 Kansas Legislature) consider the adoption of a code of ethics to govern the behavior of legislators. We do not make any specific suggestions regarding the provisions of such a code, but note with particular importance the need for a code addressing conflicts of interest.

Section III

For the reasons stated in Section I, the House Select Investigating Committee does not recommend reprimand, censure, or expulsion in the present matter. For the reasons stated in Section II, however, this conclusion does not condone litigation filed pursuant to K.S.A. 46-233(c) nor do we encourage members of the Kansas House to serve as attorneys in future actions against the state of Kansas pursuant to this statute. In that vein, we implore the Kansas Legislature to proceed with the two recommendations presented in Section II of this report.

Pursuant to Rule 4902(b) of the Kansas House of Representatives, the House Select Investigating Committee hereby dismisses the Complaint filed on March 12, 2010 against the Speaker of the Kansas House of Representatives.