

MINUTES OF THE SENATE ETHICS AND ELECTIONS COMMITTEE

The meeting was called to order by Chairman Vicki Schmidt at 9:37 a.m. on February 4, 2010, in Room 144-S of the Capitol.

All members were present.

Committee staff present:

Mike Heim, Office of the Revisor of Statutes
Sean Ostrow, Office of the Revisor of Statutes
Reed Holwegner, Kansas Legislative Research Department
Carolyn Long, Committee Assistant

Conferees appearing before the Committee:

Carol Williams, Executive Director, Governmental Ethics Commission
Julie Miller, General Counsel, Kansas Board of Regents

Others attending:

See attached list.

The chair called for approval of the minutes of January 20, January 21, January 27, and January 28, 2010 as presented. Motion of approval by Senator Brungardt, seconded by Senator Huntington. Motion carried.

The Chair opened the hearing on **SB- 416--Eliminating the expiration date on an act requiring state educational faculty to file a statement of substantial interest.** Staff informed the committee that this bill remands the provision of the bill passed last year regarding statements of substantial interests filed with a state educational institution by extending the life of this law which was passed last year beyond its expiration date of July 1, 2010.

Carol Williams, Director, Governmental Ethics Commission, stated that the commission recommends repeal of this one year law to give universities the yearly opportunity to opt out of the reporting requirement. The commission is not informed of the list of designees who will be required to file until the end of March. Faculty members at state educational institutions are currently required to file a SSI each year with their employing institution and at the same time the State SSIs are required to be filed with the Secretary of State. As a result, faculty members have been confused with these two consecutive filings. The commission believes most state educational institutions will opt to have faculty file SSIs with the university rather than the Secretary of State (Attachment 1).

Senator Reitz asked if this was the proper thing to do and worth the money and effort. Ms. Williams said that the committee would have to answer that themselves.

Julene Miller, general counsel representing the Kansas Board of Regents, presented written testimony on behalf of Reginald L. Robinson, president & CEO. The universities want information above and beyond what is required by the SSI and that information is not something that they would want subject to the open records act. The Board of Regents does not favor legislation that would shift the responsibility for administering the State's ethics law from the Commission to the state universities (Attachment 2).

The hearing on **SB 416** was closed. The Chair inquired as to the possibility of the Board of Regents and the Ethics Commission working together for language that was agreeable to both parties. Senator Reitz again stated that maybe this requirement should be deleted. Senator Brungardt and Senator Reitz will work with with a revisor to facilitate an amendment to this legislation.

The hearing on **SB 417 - Requiring campaign contributions reports, to list the occupation, but not industry, of contributors of over \$150.** The Chair again called upon staff for an overview of this proposed legislation. It would eliminate the word "and industry" from current legislation.

Once again Ms. Williams presented the Commissions' stand and indicated that although the Commission does not take a position on this, staff found that one-third to one-half did not comply and that most treasurers did not know how to categorize the donor's industry as it related to the individual's occupation (Attachment 3).

CONTINUATION SHEET

Minutes of the Senate Ethics and Elections Committee at 9:37 a.m. on February 4, 2010, in Room 144-S of the Capitol.

There being no further discussion, the hearing on **SB 417** was closed.

The Chair opened the hearing on **SB 423 - Campaign finance; transfer of campaign funds to another candidacy.** As outlined by staff, the bill would amend the Campaign Finance Act to allow candidates for state or local office to transfer residual funds remaining in their campaign fund to the campaign fund for a bonafide successor committee or candidacy. It would require all funds to be transferred. Additionally, contributions to the original campaign fund would be allowed solely for the purpose of retiring the campaign's debt.

Carol Williams once again indicated that the Commission does not take a position on this bill and offered some history and clarification on the current legislation (Attachment 4).

The Chair thanked Ms. Williams for her appearance and insight on all three bills and closed the hearing on **SB 423.**

The meeting was adjourned at 10:22 a.m. The next meeting is scheduled for February 10, 2010.

SENATE ETHICS AND ELECTIONS COMMITTEE GUEST LIST

DATE: Thursday, February 4, 2010

NAME	REPRESENTING
Brad Bryant	Sec. of State
Karina Renna	Ethics
Carol Williams	Ethics
Ashley Donta	Amagar, Smith & Assoc.

**GOVERNMENTAL ETHICS COMMISSION**

www.kansas.gov/ethics

Testimony before Senate Committee on Elections
in Support of Senate Bill 416
by Carol Williams, Executive Director
February 4, 2010

Senate Bill 416 is a recommendation made by the Governmental Ethics Commission in its 2009 Annual Report and Recommendations.

Senate Bill 416 repeals the expiration date in subsection (e) of K.S.A. 2009 Supp. 46-247a. The repeal of subsection (e) would permit the executive officer of a Regent's institution to determine each year whether its faculty members who earn an annual salary of \$50,000 or more are to file a yearly Statement of Substantial Interests (SSI) form with the Secretary of State or with his or her employing educational institution. Current law sunsets this option on June 30, 2010, one year after it went into effect.

Since 2005, faculty members who earn an annual salary of \$50,000 or more at any state educational institution have been required to file annual SSIs with the Secretary of State. The 2005 law change increased the number of individuals required to file a SSI by 3,700-3,900. In 2009, 9,673 state officers and employees were required to file a SSI. Staff believes approximately 3,887 were faculty members required to file due to the passage of the 2005 legislation.

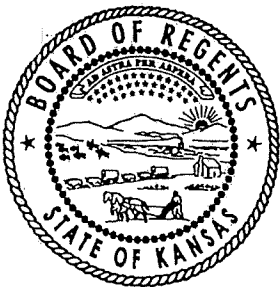
Faculty members at state educational institutions are currently required to file a SSI each year with their employing institution when their contracts are renewed. These SSIs are required to be filed at approximately the same time the State SSIs are required to be filed with the Secretary of State. As a result, faculty members have been confused with these two consecutive filings each year.

In 2009, it took 180 hours of staff time to obtain compliance from faculty members. On May 1, 2009, the day after the filing deadline, there were still 1315 faculty members who had not filed their SSI's. The statute requires that when Failure to File Notices are

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mailed, they be sent by certified mail. Had the Commission sent these notices on May 1, 2009, the Commission would have incurred mailing expenses of \$8,534. To save agency funds since 2005, staff has sent past due notices by first class mail before sending the certified notices. Deleting these additional filings will save the Commission agency resources and funds.

The Commission believes most, if not all, state educational institutions will opt to have faculty members file SSIs with the university rather than the Secretary of State. The Commission recommends this one year option for the universities be extended indefinitely and urges your passage of SB 416 favorably.



KANSAS BOARD OF REGENTS

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February 4, 2010

Senator Vicki Schmidt, Chair
Senate Ethics & Elections Committee
Statehouse, Room 552-S
Topeka, KS 66612

Senator Oletha Faust-Goudeau, Ranking Member
Senate Ethics & Elections Committee
Statehouse, Room 124-E
Topeka, KS 66612

Dear Chairwoman Schmidt and Ranking Member Faust-Goudeau:

On behalf of the Kansas Board of Regents, I write to you regarding Senate Bill 416, legislation that would make permanent the option for state university CEOs to require faculty members with an annual salary of \$50,000 or more to file their statements of substantial interest with the university in lieu of the Governmental Ethics Commission.

The statute this bill seeks to amend, K.S.A. 2009 Supp. 46-247a, was enacted last session as a compromise. The Governmental Ethics Commission had sought to repeal the provision in K.S.A. 46-247 that requires faculty of state universities who receive \$50,000 or more in annual salary to file statements of substantial interest (SSIs) because enforcement of the provision had become burdensome for the Commission. State universities supported the proposal to repeal the filing requirement for this group of individuals for two reasons. First, this is the only group of state employees required to file SSIs based solely on their salary level, all others being either policy makers or consultants for entities other than their employer. Second, elimination of the filing requirement would have relieved these faculty members from having to file both an SSI with the State and a Conflict of Interest, Commitment of Time statement (COI/COT) with the university.

When Legislators learned that the university COI/COT statements are filed in the employees' personnel files and thus not subject to open records requirements, K.S.A. 46-247a was crafted as a substitute for the repeal of the special SSI filing requirement that the Ethics Commission and the universities supported. Our sense is that proponents of this approach believed it would address the second reason stated above for the state universities' and their faculties' support of the original proposal to repeal the SSI filing requirement. However, because any state university that opts to require filing of SSIs with the university rather than the Commission will have to make those SSIs open records, there will continue to be a need for two filings (one containing just the SSI required information which will be an open record, and the other containing potentially more information and treated as a personnel record). Thus, under this compromise legislation, faculty will continue to have to file two statements and, if any university CEO chooses the option of requiring the filing of SSIs with the university, the university's administrative costs related to the collection of this information would double.

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Attachment 2

The Board of Regents does not favor legislation that would shift the responsibility, burden and cost for administering the State's ethics law from the Governmental Ethics Commission to the state universities.

Thank you for your consideration of the Board's position on Senate Bill 416.

Sincerely,

A handwritten signature in black ink, appearing to read "R. L. Robinson". The signature is written in a cursive, flowing style.

Reginald L. Robinson
President & CEO

**GOVERNMENTAL ETHICS COMMISSION**

www.kansas.gov/ethics

**Testimony before Senate Committee on Elections
in Support of Senate Bill 417
by Carol Williams, Executive Director
February 4, 2010**

Senate Bill 417 would eliminate the requirement that treasurers of candidates, political action committees, and party committees list the industry of individual contributors who donate more than \$150 on receipts and expenditures reports.

In 2008, the Governmental Ethics Commission recommended that treasurers be required to list the occupation and employer of individual donors who contribute more than \$150 on their receipts and expenditures reports. The Legislature chose to require the industry of a donor be listed rather than the donor's employer.

Staff's comprehensive desk review of all 2008 campaign finance reports reflected close to half of all state and local candidates did not correctly list the industry of individuals donating more than \$150. Staff does not believe it was intentional on the part of treasurers to incorrectly list or omit the industry of donors, but more that the treasurers did not know how to categorize the donor's industry as it relates to the individual's occupation. As a result of these omissions, many candidates received Notifications of Material Error or Omission letters requiring the treasurer to correctly list the industry.

The Governmental Ethics Commission had no input on this bill. This bill is supported by Commission staff to address this reporting problem. Deleting the requirement that "industry" be listed in addition to "occupation" on receipts and expenditures reports will save staff time, agency resources, and make it easier for treasurers to comply with the Act.

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**GOVERNMENTAL ETHICS COMMISSION**

www.kansas.gov/ethics

**Testimony before Senate Elections Committee
on Senate Bill 423****By Carol Williams, Executive Director****February 4, 2010**

On behalf of the Governmental Ethics Commission, I stand before you today as neither a proponent or opponent of Senate Bill 423. The Governmental Ethics Commission does not take a position on this bill. This testimony is being provided as background information and to explain the amendments and new language being provided for K.S.A. 25-4142, K.S.A. 25-4143 and K.S.A. 25-4157a.

Senate Bill 423 was introduced to address the Kansas Supreme Court decision in *Joan Cole v Carlos Mayans and Winston Kenton* handed down in December of 2003. In its' decision, the Court ruled that Carlos Mayans, a candidate for Mayor in the city of Wichita, is prohibited from transferring funds from his legislative campaign account to his mayoral account. The Court ruled the transfer of funds from one campaign account to another is a contribution and that K.S.A. 25-4157a(c) prohibits contributions between candidacies.

As background, in July of 2002, Representative Mayans requested an advisory opinion from the Commission as to whether he could transfer his State Representative campaign funds to a campaign account to run as a candidate for Mayor in Wichita. In Opinion 2002-20, the Commission stated "Nothing in the Kansas Campaign Finance Act prohibits a state legislator from using his existing campaign funds to run for a city office". Acting upon Opinion 2002-20, Representative Mayans transferred funds from his State Representative campaign account to a new mayoral campaign account. In February 2003, Mr. Mayans' attorney requested another advisory opinion from the Commission. The Commission was asked if the Campaign Finance Act prohibits a former State legislator from transferring funds from his legislative campaign fund to his Mayoral campaign fund, whether Mayans' Mayoral campaign was a bona fide successor committee or candidacy, and whether the transfer of funds by a candidate from one candidacy to

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a bona fide successor candidacy constitutes a contribution. The Commission opined that as long as a candidate carries over the remaining balance of his first campaign fund to a bona fide successor campaign, the Act does not prohibit the transfer. In addition, since Mr. Mayans intended his mayoral campaign to be a successor campaign to his legislative campaign, the Commission considered the Mayoral campaign to be a bona fide successor candidacy, and that carryover funds by a candidate to a bona fide successor candidacy does not constitute a contribution pursuant to K.A.R. 19-22-1.

Since 1976, the Commission has issued eight advisory opinions to legislators and other individuals inquiring whether a candidate could transfer excess campaign funds to a campaign account for another state or local office. In each opinion issued since 1976, the Commission has opined that it is permissible to make such a transfer and that these transfers do not constitute a contribution. A minimum of 60 candidates had made such transfers between 1976 and 2003.

Senate Bill 423 amends three provisions of the Campaign Finance Act. These amendments would permit a candidate for a state or local office to transfer all residual funds from his or her original campaign account to a new campaign account which is established by the candidate when he or she files for a different state or local office.

New Section 4 would permit a candidate who has debt remaining from his or her original campaign, to retire such debt by accepting contributions subject to the contribution limits for the original office sought. Once the debt is retired, the candidate would be required to terminate such candidacy.

New Section 5 provides that any candidate who transferred campaign funds to a bona fide successor candidacy commencing January 1, 1976 through the day preceding the effective date of this act, will have made such transfer in compliance with the provisions of the Campaign Finance Act.