

MINUTES OF THE SENATE ETHICS AND ELECTIONS COMMITTEE

The meeting was called to order by Chairman Vicki Schmidt at 9:30 a.m. on March 17, 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
Martha Dorsey, Kansas Legislative Research Department
Carolyn Long, Committee Assistant

Conferees appearing before the Committee:

Dr. Mark Peterson, Washburn University

Others attending:

See attached list.

Dr. Mark Peterson, Washburn University

It was moved by Senator Brungardt and seconded by Senator Huntington that the minutes of the March 10, 2010 meeting be approved as transmitted. Motion carried.

The Chair opened the hearing on **SB-576 - Elections; campaign finance, public service advertisements by candidates restricted near elections** and asked for staff explanation. This bill requires that no candidate appear in a public service announcement or advertisement within 30 days of any primary or general election in which the candidate's name appears on the ballot. This requirement would become part of the Campaign Finance Act.

The Chair recognized Dr. Mark Peterson, Washburn University, who spoke in favor of the legislation. He stated that Federal Elections Commission takes this matter sufficiently seriously that candidates for the U.S. House, Senate, and the presidency are banned from "willingly appearing" in Public Service Announcements or "promotion ads" by a third party for 45 days before a primary election and 60 days before the general election (Attachment 1).

In response to committee questions regarding a station's responsibility, Kent Cornish, Kansas Association of Broadcasters, stated that federal election law requires stations to give equal opportunity at the same rate given an opponent if requested within seven (7) days. Most stations are aware of the rules and are wary of them. Federal law only applies once a candidate is a "qualified" candidate, just stating that they are going to run does not make them qualified. The ban of 45 and 60 days regulating federal candidates does not apply at the state level and only applies to equal opportunity of air time. The hearing on **SB 576** was closed and the chair thanked all those who participated in the discussion.

Staff passed out information requested by the committee asking for a comparison of other states who have provisions for bringing judges under the Campaign Finance Act (Attachment 2). Staff offered an amendment to **SB-563; Campaign Finance Act; application to retention elections for appellate justices and other judges** (Attachment 3). The amendment amends Section 25-2505 by striking Section 1, striking lines 12-24 as it is redundant, and on page 5 refine the definition of "state office" to include justices of the supreme court and judges of the court of appeals. It also doubles the amounts of contributions from a committee or person to \$4,000 for a justice of the supreme court or a judge of the court of appeals and for a district judge or a district magistrate judge the amount would be \$1,000 for each retention election. The hearing on **SB 563** was closed.

The next meeting is scheduled for March 18, 2010.

The meeting was adjourned at 10:30 a.m.

Remarks by Mark Peterson, Ph.D. Before the Kansas Senate Committee on
Ethics and Elections regarding PSAs using Elected Incumbents

17 March 2010

Madam Chair, members of the committee, good morning. My name is Mark Peterson. I'm here today as a surrogate for my colleague, Dr. Bob Beatty. He is unable to be here because its Spring Break, the Royals are in Spring Training, and he is bonding with his 13 year old son Alec this week. I admire a man who has his priorities straight.

By way of disclosure, both Dr. Beatty and I are on the political science faculty at Washburn University, however, the views I am expressing this morning are those of Dr. Beatty and myself, and do not represent those of the university, its officers or the board of regents. I'm here to provide comment on Senate Bill 576, "An act concerning elections and campaign finance; relating to public service advertisements by candidates."

As we all know, issues, ideas and products associated with celebrity sell. And sometimes issues, ideas and products create celebrities. Some of us are old enough to remember how Ronald Reagan went from 20 Mule Team Borax to General Electric spokesperson to the California governorship and then the White House. As electronic media has metastasized into the blooming buzzing confusion it is today, political candidates, incumbents, interest groups, issue advocacy organizations, everyone who owns a dog in the political fight has sought a tool or technique to give them an edge in catching the public's attention.

One that has become quite interesting to observers of the political arena is an old tool that has gotten more attractive in recent cycles as the costs of conventional media have grown, and audiences have become more fractured by age, greater or lesser affluence and choices of preferred media. "Free media" as campaign strategists call it, has always been a much sought after thing in election campaigns. Anytime a candidate can be quoted, recorded or photographed at an event that creates a positive association for supporters and the undecided, it's a red letter day for the candidate, her manager, and the campaign finance chair. It is also the case that Senator Somebody is more likely to have the opportunity to be associated with such a serendipitous event than it is for her relatively less well-known challenger, Mr. Joe Mightbee.

If you accept the foregoing, then consider the impact when a good, and well-known idea comes looking for an assist from an admired and well-known public incumbent. Recently, in New Mexico, Lt. Governor Diane Denish made a public service TV ad urging parents to have their children vaccinated with H1N1 flu vaccine and urging children to adopt good flu hygiene practices. Perfectly innocuous you might think, and certainly appropriate for a state official to do, but Lt. Governor Denish is the leading candidate for governor in New Mexico in the November election as current Governor Bill Richardson cannot run for a third term. While Ms. Denish is reasonably well-known, particularly in the Albuquerque and Santa Fe communities, she's not exactly a household word elsewhere in the state, but everybody has been sensitized to H1N1. The

relationship is ideal. The Lt. Governor declares who she is and what her office is at the outset of the 60 second commercial and remains then visible and audible throughout the remainder of the spot. Placement of the ad is easily accomplished all across the state, and not just in those choice PSA timeslots at 11:00PM Saturday night, 5:30 AM weekdays just after station sign on. When the governor proposed banning this type of Public Service Announcement in the weeks before an election in the ethics reform bill he proposed to the state legislature, Lt. Governor Denish took the hint and asked that the ad be pulled.

Here in Kansas our 2nd District Congresswoman, Lynn Jenkins achieved a great deal of benefit for herself and her race for that seat by being visibly and audibly associated with ads for the Kansas Learning Quest college savings program -- a worthwhile program that provided a lot of name and image recognition opportunity for our soon-to-be first term member of Congress. The value of these commercials in terms of media buy-time was probably many hundreds of thousands of dollars. The production costs, paid by someone or some organization other than the candidates' campaigns, probably also ran well into six figures.¹ And would a typical challenger have access to a similar opportunity? Not likely. Representative Jenkins case is all the more interesting because she **was the challenger**. She held a lower profile, albeit statewide, elected position that gave her some existing level of name recognition, but perhaps more

¹ In the Denish case it was the New Mexico State Health Department. In Representative Jenkins' case, as Treasurer of the state of Kansas her office administers Learning Quest. American Century Investments operates the fund itself. The current website for Learning Quest is operated by American Century and presently has at least one viewable commercial featuring new Treasurer Dennis McKinney.

importantly, a logical and official connection to a program with a great deal of relevance to her desired base of supporters.

In doing the background research for this presentation, Dr. Beatty determined that the Federal Elections Commission takes this matter sufficiently seriously that candidates for the US. House, Senate and the presidency are banned from “willingly appearing” in Public Service Announcements or “promotion ads” by a third party for 30 days before a primary election and 60 days before the general election.

Making the election process “fairer” is in my estimation a bit like playing the video game Senator McCain made famous during the last election cycle – “Whack-a-Mole.” Elections are after all barely civilized affairs conducted, for the most part, without physical brutality. But the notion that they are in some fashion supposed to be “fair fights” is amusing to be kind. Nevertheless, blatant advantage to public officeholders, whether incumbents or challengers, tends to mobilize the idealists in protest and provide further confirmation of the inherent corruption of the system for cynics. It would be a small step forward to close off this one avenue of dubious ethical behavior.

States with Provision for Retention of Judges

Alaska
Arizona
California (Supreme Court)
Colorado
Florida
Illinois
Iowa
Maryland (Supreme Court)
Missouri
Nebraska
New Mexico
Oklahoma (Supreme Court)
Pennsylvania
South Dakota (Supreme Court)
Tennessee (Supreme Court)
Utah
Wyoming

Kansas Legislative Research Department

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Senate Ethics and Elections Cmte
Date 3-17-2010
Attachment 2

Proposed Amendments
Revisor of Statutes Office
Mike Heim
March 12, 2010

SENATE BILL No. 563

By Committee on Federal and State Affairs

3-3

9 AN ACT concerning the campaign finance act; pertaining to coverage
10 for certain retention elections; amending K.S.A. 25-2505 and K.S.A.
11 2009 Supp. 25-4143 and repealing the existing sections.
12

25-4153

13 *Be it enacted by the Legislature of the State of Kansas:*

14 ~~Section 1. K.S.A. 25-2505 is hereby amended to read as follows: 25-~~
15 ~~2505. (a) "National office" or "national officer" means the office or mem-~~
16 ~~bers of the United States house of representatives, members of the~~
17 ~~United States senate and members of the United States presidential elec-~~
18 ~~toral college.~~

Strike all

19 ~~(b) (1) "State office" or "state officer" means the state officers~~
20 ~~elected on a statewide basis, members of the house of representatives~~
21 ~~and state senators, members of the state board of education, district~~
22 ~~judges, district magistrate judges and district attorneys.~~

23 ~~(2) The term "state office" or "state officer" shall also include any~~
24 ~~incumbent:~~

25 ~~(A) Justice of the supreme court who is subject to election upon the~~
26 ~~question of retention pursuant to K.S.A. 25-111, and amendments thereto.~~

27 ~~(B) Judge of the court of appeals who is subject to election upon the~~
28 ~~question of retention pursuant to K.S.A. 25-3006, and amendments~~
29 ~~thereto.~~

30 ~~(C) District court judge who is subject to election upon the question~~
31 ~~of retention pursuant to either K.S.A. 20-2908 or 25-113, and amendments~~
32 ~~thereto.~~

33 ~~(D) District magistrate judge who is subject to election upon the ques-~~
34 ~~tion of retention pursuant to either K.S.A. 20-337 or 20-2908, and amend-~~
35 ~~ments thereto.~~

36 ~~(c) "County office" or "county officer" means such county officers as~~
37 ~~are provided by law to be elected.~~

38 ~~(d) "City office" or "city officer" means such city officers as are pro-~~
39 ~~vided by law to be elected.~~

40 ~~(e) "School office" or "school officer" means members of the gov-~~
41 ~~erning body of any school district or community college.~~

42 ~~(f) "Township office" or "township officer" means the trustee, trea-~~
43 ~~surer and clerk of a township.~~

Senate Ethics and Elections Cmte
Date 3-17-2010
Attachment 3

Section 1.

3-2

1 ~~Sec. 2.~~ K.S.A. 2009 Supp. 25-4143 is hereby amended to read as
2 follows: 25-4143. As used in the campaign finance act, unless the context
3 otherwise requires:

4 (a) "Candidate" means an individual who: (1) Appoints a treasurer or
5 a candidate committee;

6 (2) makes a public announcement of intention to seek nomination or
7 election to state or local office;

8 (3) makes any expenditure or accepts any contribution for such per-
9 son's nomination or election to any state or local office; ~~or~~ Or

10 (4) files a declaration or petition to become a candidate for state or
11 local office; ~~or~~

12 ~~(5) is an individual who is subject to an election for the purposes of~~
13 ~~retention in office and who is an incumbent.~~

14 ~~(A) Justice of the supreme court who is subject to election upon the~~
15 ~~question of retention pursuant to K.S.A. 25-111, and amendments thereto;~~

16 ~~(B) judge of the court of appeals who is subject to election upon the~~
17 ~~question of retention pursuant to K.S.A. 25-3006, and amendments~~
18 ~~thereto;~~

19 ~~(C) district court judge who is subject to election upon the question~~
20 ~~of retention pursuant to either K.S.A. 20-2908 or 25-113, and amendments~~
21 ~~thereto; and~~

22 ~~(D) district magistrate judge who is subject to election upon the ques-~~
23 ~~tion of retention pursuant to either K.S.A. 20-337 or 20-2908, and amend-~~
24 ~~ments thereto.~~

25 (b) "Candidate committee" means a committee appointed by a can-
26 didate to receive contributions and make expenditures for the candidate.

27 (c) "Clearly identified candidate" means a candidate who has been
28 identified by the:

29 (1) Use of the name of the candidate;

30 (2) use of a photograph or drawing of the candidate; or

31 (3) unambiguous reference to the candidate whether or not the
32 name, photograph or drawing of such candidate is used.

33 (d) "Commission" means the governmental ethics commission.

34 (e) (1) "Contribution" means:

35 (A) Any advance, conveyance, deposit, distribution, gift, loan or pay-
36 ment of money or any other thing of value given to a candidate, candidate
37 committee, party committee or political committee for the express pur-
38 pose of nominating, electing or defeating a clearly identified candidate
39 for a state or local office.

40 (B) Any advance, conveyance, deposit, distribution, gift, loan or pay-
41 ment of money or any other thing of value made to expressly advocate
42 the nomination, election or defeat of a clearly identified candidate for a
43 state or local office;

1 (C) a transfer of funds between any two or more candidate commit-
2 tees, party committees or political committees;

3 (D) the payment, by any person other than a candidate, candidate
4 committee, party committee or political committee, of compensation to
5 an individual for the personal services rendered without charge to or for
6 a candidate's campaign or to or for any such committee;

7 (E) the purchase of tickets or admissions to, or advertisements in
8 journals or programs for, testimonial events;

9 (F) a mailing of materials designed to expressly advocate the nomi-
10 nation, election or defeat of a clearly identified candidate, which is made
11 and paid for by a party committee with the consent of such candidate.

12 (2) "Contribution" does not include:

13 (A) The value of volunteer services provided without compensation;

14 (B) costs to a volunteer related to the rendering of volunteer services
15 not exceeding a fair market value of \$50 during an allocable election
16 period as provided in K.S.A. 25-4149, and amendments thereto;

17 (C) payment by a candidate or candidate's spouse for personal meals,
18 lodging and travel by personal automobile of the candidate or candidate's
19 spouse while campaigning;

20 (D) the value of goods donated to events such as testimonial events,
21 bake sales, garage sales and auctions by any person not exceeding a fair
22 market value of \$50 per event.

23 (f) "Election" means:

24 (1) A primary or general election for state or local office; ~~and~~

25 (2) a convention or caucus of a political party held to nominate a
26 candidate for state or local office; *and*

27 (3) *an election to determine the retention of an incumbent:*

28 (A) *Justice of the supreme court who is subject to election upon the*
29 *question of retention pursuant to K.S.A. 25-111, and amendments thereto;*

30 (B) *judge of the court of appeals who is subject to election upon the*
31 *question of retention pursuant to K.S.A. ~~25-3006~~, and amendments*
32 *thereto;*

20-3006

33 (C) *district court judge who is subject to election upon the question*
34 *of retention pursuant to either K.S.A. 20-2908 or 25-113, and amendments*
35 *thereto; and*

36 (D) *district magistrate judge who is subject to election upon the ques-*
37 *tion of retention pursuant to either K.S.A. 20-337 or 20-2908, and amend-*
38 *ments thereto.*

39 (g) (1) "Expenditure" means:

40 (A) Any purchase, payment, distribution, loan, advance, deposit or
41 gift of money or any other thing of value made by a candidate, candidate
42 committee, party committee or political committee for the express pur-
43 pose of nominating, electing or defeating a clearly identified candidate

- 1 for a state or local office.
- 2 (B) Any purchase, payment, distribution, loan, advance, deposit or
3 gift of money or any other thing of value made to expressly advocate the
4 nomination, election or defeat of a clearly identified candidate for a state
5 or local office;
- 6 (C) any contract to make an expenditure;
- 7 (D) a transfer of funds between any two or more candidate commit-
8 tees, party committees or political committees; or
- 9 (E) payment of a candidate's filing fees.
- 10 (2) "Expenditure" does not include:
- 11 (A) The value of volunteer services provided without compensation;
- 12 (B) costs to a volunteer incidental to the rendering of volunteer serv-
13 ices not exceeding a fair market value of \$50 during an allocable election
14 period as provided in K.S.A. 25-4149, and amendments thereto;
- 15 (C) payment by a candidate or candidate's spouse for personal meals,
16 lodging and travel by personal automobile of the candidate or candidate's
17 spouse while campaigning or payment of such costs by the treasurer of a
18 candidate or candidate committee;
- 19 (D) the value of goods donated to events such as testimonial events,
20 bake sales, garage sales and auctions by any person not exceeding fair
21 market value of \$50 per event; or
- 22 (E) any communication by an incumbent elected state or local officer
23 with one or more individuals unless the primary purpose thereof is to
24 expressly advocate the nomination, *retention or nonretention*, election or
25 defeat of a clearly identified candidate.
- 26 (h) "Expressly advocate the nomination, *retention or nonretention*,
27 election or defeat of a clearly identified candidate" means any commu-
28 nication which uses phrases including, but not limited to:
- 29 (1) "Vote for the secretary of state";
- 30 (2) "re-elect your senator";
- 31 (3) "support the democratic nominee";
- 32 (4) "cast your ballot for the republican challenger for governor";
- 33 (5) "Smith for senate";
- 34 (6) "Bob Jones in '98";
- 35 (7) "vote against Old Hickory";
- 36 (8) "defeat" accompanied by a picture of one or more candidates; or
- 37 (9) "Smith's the one";
- 38 (10) "retain judge or justice Smith";
- 39 (11) "retire judge or justice Smith"; or
- 40 (12) "reject judge or justice Smith".
- 41 (i) "Party committee" means:
- 42 (1) The state committee of a political party regulated by article 3 of
43 chapter 25 of the Kansas Statutes Annotated, and amendments thereto;

1 (2) the county central committee or the state committee of a political
2 party regulated under article 38 of chapter 25 of the Kansas Statutes
3 Annotated, and amendments thereto;

4 (3) the bona fide national organization or committee of those political
5 parties regulated by the Kansas Statutes Annotated;

6 (4) not more than one political committee established by the state
7 committee of any such political party and designated as a recognized
8 political committee for the senate;

9 (5) not more than one political committee established by the state
10 committee of any such political party and designated as a recognized
11 political committee for the house of representatives; or

12 (6) not more than one political committee per congressional district
13 established by the state committee of a political party regulated under
14 article 38 of chapter 25 of the Kansas Statutes Annotated, and amend-
15 ments thereto, and designated as a congressional district party committee.

16 (j) "Person" means any individual, committee, corporation, partner-
17 ship, trust, organization or association.

18 (k) (1) "Political committee" means any combination of two or more
19 individuals or any person other than an individual, a major purpose of
20 which is to expressly advocate the nomination, *retention or nonretention*,
21 election or defeat of a clearly identified candidate for state or local office
22 or make contributions to or expenditures for the nomination, *retention*
23 *or nonretention*, election or defeat of a clearly identified candidate for
24 state or local office.

25 (2) "Political committee" shall not include a candidate committee or
26 a party committee.

27 (l) "Receipt" means a contribution or any other money or thing of
28 value, but not including volunteer services provided without compensa-
29 tion, received by a treasurer in the treasurer's official capacity.

30 (m) "State office" means ~~any state office as defined in K.S.A. 25-2505,~~
31 ~~and amendments thereto.~~

32 (n) "Testimonial event" means an event held for the benefit of an
33 individual who is a candidate to raise contributions for such candidate's
34 campaign. Testimonial events include but are not limited to dinners,
35 luncheons, rallies, barbecues and picnics.

36 (o) "Treasurer" means a treasurer of a candidate or of a candidate
37 committee, a party committee or a political committee appointed under
38 the campaign finance act or a treasurer of a combination of individuals
39 or a person other than an individual which is subject to paragraph (2) of
40 subsection (a) of K.S.A. 25-4172, and amendments thereto.

41 (p) "Local office" means a member of the governing body of a city
42 of the first class, any elected office of a unified school district having
43 35,000 or more pupils regularly enrolled in the preceding school year, a

the state officers elected on a statewide basis, members of the house of representatives and state senators, members of the state board of education, justices of the supreme court, judges of the court of appeals, district judges, district magistrate judges and district attorneys

1 county or of the board of public utilities.

2 Sec. 3. K.S.A. ~~25-2505~~ and K.S.A. 2009 Supp. 25-4143 are hereby
3 repealed.

4 Sec. 4. This act shall take effect and be in force from and after its
5 publication in the Kansas register.

Sec. 2. K.S.A. 25-4153
(see attached)

25-4153

3-6

Sec. 2. K.S.A. 25-4153 is hereby amended to read as follows:
25-4153. (a) The aggregate amount contributed to a candidate and such candidate's candidate committee and to all party committees and political committees and dedicated to such candidate's campaign, by any political committee or any person except a party committee, the candidate or the candidate's spouse, shall not exceed the following:

(1) For the pair of offices of governor and lieutenant governor or for other state officers elected from the state as a whole, \$2,000 for each primary election (or in lieu thereof a caucus or convention of a political party) and an equal amount for each general election;

(2) for a justice of the supreme court or a judge of the court of appeals, \$4,000 for each retention election;

(3) for a district judge or a district magistrate judge, \$1,000 for each retention election;

(4) For the office of member of the house of representatives, district judge, district magistrate judge, district attorney, member of the state board of education or a candidate for local office, \$500 for each primary election (or in lieu thereof a caucus or convention of a political party) and an equal amount for each general election.

~~(3)~~ (5) For the office of state senator, \$1,000 for each primary election (or in lieu thereof a caucus or convention of a political party) and an equal amount for each general election.

(b) For the purposes of this section, the face value of a

loan at the end of the period of time allocable to the primary or general election is the amount subject to the limitations of this section. A loan in excess of the limits herein provided may be made during the allocable period if such loan is reduced to the permissible level, when combined with all other contributions from the person making such loan, at the end of such allocable period.

(c) For the purposes of this section, all contributions made by unemancipated children under 18 years of age shall be considered to be contributions made by the parent or parents of such children. The total amount of such contribution shall be attributed to a single custodial parent and 50% of such contribution to each of two parents.

(d) The aggregate amount contributed to a state party committee by a person other than a national party committee or a political committee shall not exceed \$15,000 in each calendar year; and the aggregate amount contributed to any other party committee by a person other than a national party committee or a political committee shall not exceed \$5,000 in each calendar year.

The aggregate amount contributed by a national party committee to a state party committee shall not exceed \$25,000 in any calendar year, and the aggregate amount contributed to any other party committee by a national party committee shall not exceed \$10,000 in any calendar year.

The aggregate amount contributed to a party committee by a

political committee shall not exceed \$5,000 in any calendar year.

(e) Any political funds which have been collected and were not subject to the reporting requirements of this act shall be deemed a person subject to these contribution limitations.

(f) Any political funds which have been collected and were subject to the reporting requirements of the campaign finance act shall not be used in or for the campaign of a candidate for a federal elective office.

(g) The amount contributed by each individual party committee of the same political party other than a national party committee to any candidate for office, for any primary election at which two or more candidates are seeking the nomination of such party shall not exceed the following:

(1) For the pair of offices of governor and lieutenant governor and for each of the other state officers elected from the state as a whole, \$2,000 for each primary election (or in lieu thereof a caucus or convention of a political party);

(2) For the office of member of the house of representatives, district judge, district magistrate judge, district attorney, member of the state board of education or a candidate for local office, \$500 for each primary election (or in lieu thereof a caucus or convention of a political party).

(3) For the office of state senator, \$1,000 for each primary election (or in lieu thereof a caucus or convention of a political party).

(h) When a candidate for a specific cycle does not run for

office, the contribution limitations of this section shall apply as though the individual had sought office.

(i) No person shall make any contribution or contributions to any candidate or the candidate committee of any candidate in the form of money or currency of the United States which in the aggregate exceeds \$100 for any one primary or general election, and no candidate or candidate committee of any candidate shall accept any contribution or contributions in the form of money or currency of the United States which in the aggregate exceeds \$100 from any one person for any one primary or general election.