

MINUTES

House Select Investigative Committee

March 29, 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
Gary Deeter, Committee Secretary

Conferees

Others Attending

See attached sheet

The Chairman called the meeting to order at 1:34 p.m. and welcomed Staff Norm Furse, Office of the Revisor of Statutes, who provided further information to assist the Committee in establishing a definition for misconduct.

Mr. Furse referenced a protest in the House Journal for June 4, 2009, a protest by Speaker O'Neal which noted the Attorney General's opinion questioning the constitutionality of fee sweeps as a revenue measure. Mr. Furse also referenced the section of **K.S.A. 46-233** which prohibits a legislator from representing a special interest group in court within one year unless the legislator voted against the measure at issue (Attachment 1). Mr. Furse then reviewed a memo written in 1993 regarding the history of legislative protests (Attachment 2).

Mr. Furse illustrated the process by which monies are swept from fee funds into the

State General Fund [SGF] ([Attachment 3](#)). Referencing 2002 and 2003 Session Laws of Kansas (Chapters 205 and 3 respectively), Mr. Furse traced legislation authorizing the transfer of monies from fee funds to the SGF and, on occasion, how the fee funds were partially restored by transfers from the SGF. He noted that deficits from some fee funds continue to be carried over from one year to the next.

After noting a recall reference in the Kansas Constitution and in statute (**K.S.A. 25-4302**), the latter which defines misconduct as a violation of law that impacts an officer's ability to perform the duties of the office, Mr. Furse reviewed recall procedures drawn from Kansas court cases ([Attachment 4](#)). He observed that the court cases reflect the intent of the statute: that misconduct is held to be actions that affect an officer's performance; misconduct does not reference an individual's character or morality. He commented that, under House rules, members may set standards for reprimand, censure, or expulsion.

In reference to fees paid to an attorney who sues the state, Mr. Furse said that funds may come through an appropriations bill or through a claims bill; a claims bill would seem to be the better procedure.

The Chair referred to a document provided by Speaker O'Neal regarding four specific transfers to the SGF from four special revenue funds ([Attachment 5](#)). The transfers were included in the 2009 **House Sub for SB 23**. The document concluded by saying that none of the receipts to the funds were generated through payment by individuals in the form of a fee imposed by the state.

The Chair noted three documents provided by Minority Leader Davis: a Senate Code of Ethics from the Iowa Legislature ([Attachment 6](#)), an article from the *Hastings Law Journal* dealing with whether or not legislators should be practicing lawyers ([Attachment 7](#)), and a letter from the complainants offering some guidelines for the Committee in defining the term *misconduct* ([Attachment 8](#)).

A member outlined what he considered five essential elements of the Complaint:

- That a lawyer-legislator should not, as a private lawyer, sue the state;
- That a lawyer-legislator should not receive a fee from special-interest groups for such a lawsuit;
- That the lawsuit should not in any way be related to the legislative appropriations process in which that legislator had a vote;
- That a Speaker of the House of Representative should not participate in such a lawsuit; and
- That a lawyer-legislator should not represent clients in a lawsuit if those clients have given money to his/her election campaign.

Another member, commenting on the previous member's observations, suggested that the complaint could be reduced to the fact that the Speaker is in the dual position of holding an attorney-client relationship with a number of interested parties to the legislative process while holding a position of power over the outcome of that legislative process. This situation creates an appearance of impropriety and casts suspicion on the institution of the House and the office of the Speaker.

The Chair noted that the law anticipates the tension created by such a lawsuit and stipulates rules by which a legislator may bring a lawsuit against the state. A member replied that the Speaker's actions cross no prohibited lines of conduct, but his actions create a shadow over the office of Speaker. Responding to another question, Mr. Furse replied that a "no" vote can be printed as a protest in the House Journal or may be validated by an explanation of vote.

Members discussed whether the Committee report should include guidelines or specific rules addressing misconduct. No consensus developed. The Chair recommended that members give further study to the information provided.

A member noted previous testimony by the Speaker that, since five of the six complainants did not appear before the Committee, their part in the complaint should be dismissed. A motion was made, seconded, and passed unanimously to dismiss five members of the Complaint: Representatives Ward, Phelps, Ballard, Crow, and Neighbor. (Motion by Representative Dillmore, seconded by Representative Holmes)

The meeting was adjourned at 1:30 p.m. The next meeting is scheduled for Tuesday, March 30, 2010.

Prepared by Gary Deeter

Approved by the Committee on:

March 30, 2010