

GOVERNMENTAL
ETHICS
COMMISSION

2012

ANNUAL
REPORT

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PREFACE

This annual report and recommendations is submitted to the Governor and the Legislative Coordinating Council for transmittal to the Legislature pursuant to K.S.A. 25-4119a and K.S.A. 46-1212c. With some exceptions, the report covers the period from July 1, 2011, through June 30, 2012, the end of Fiscal Year 2012. Occasionally, data for the first quarter of Fiscal Year 2013 is used in order to provide a more complete picture of the Commission's operations.

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Mission:

The Governmental Ethics Commission works to foster public trust and confidence in state government decision-making through education, administration and enforcement of the Campaign Finance Act and State Governmental Ethics Laws.

The Kansas Governmental Ethics Commission was established by the Kansas Legislature in 1974 to administer, interpret, and enforce the Campaign Finance Act (K.S.A. 25-4142 *et seq.*) and laws relating to conflict of interests, financial disclosure, and the regulation of lobbying (K.S.A. 46-215 *et seq.*). These laws establish the public's right to information about the financial affairs of Kansas' public officials, lobbyists, and candidates for state and local office. The Commission also renders advisory opinions and can adopt rules and regulations under a less comprehensive conflict of interests law covering local government officials and employees (K.S.A. 75-4301 *et seq.*).

Agency Philosophy:

The Kansas Governmental Ethics Commission believes the strongest safeguard against unethical conduct by public officials and employees is an informed and active public. For the disclosure elements of the legislation to have meaning, the public must be made aware of the legislation and the financial disclosure information must be accessible to the public. To this end, the Commission and its staff will approach their duties with a dedicated sense of purpose and responsibility to the individuals subject to the Campaign Finance Act and State Governmental Ethics Laws and the citizens of Kansas by performing their activities in an efficient and impartial manner.

Commission Members

The Kansas Governmental Ethics Commission is a nine member, bipartisan, citizen commission authorized by K.S.A. 25-4119a. Members serve two year terms with the Commission's Chairman appointed by the Governor. The Vice-Chairman is elected by the membership. Commission appointments are made by the Governor, Attorney General, Secretary of State, Chief Justice of the Supreme Court, President of the Senate, Minority Leader of the Senate, Speaker of the House of Representatives, and the Minority Leader in the House. The Governor makes two appointments, each from a different political party.

The Commission usually meets once a month. The Commission's meetings are open to the public and information prepared by the staff for each meeting is available to the public. During FY 2012, the Commission held 10 meetings. Meetings are scheduled to address a variety of matters including the review of and action on complaints filed, investigations undertaken, and audits performed. In addition, the Commission issues advisory opinions to answer questions involving interpretation of a particular section of the law, it makes policy decisions, amends and adopts new administrative regulations and handles administrative matters including personnel, budget preparations, office procedures, etc.

Commission Staff

The staff of the Commission assumes all responsibility for the daily operations of the agency which include administration, legal, investigative, audit, information technology, and clerical functions. As a service oriented agency, staff strives to assist individuals in complying with applicable laws by responding quickly, efficiently and impartially. Commission staff also works diligently to get campaign finance and lobbying data compiled, entered and posted on the Internet to be viewed by the citizens of Kansas.

Current Commission Members

Dan Harden, Chairman, Libertarian, Meriden

Term expires January 31, 2013

Carol Foreman, Democrat, Topeka

Term expires January 31, 2014

Sue Krische, Republican, Topeka

Term expires January 31, 2013

Kyle Krull, Republican, Overland Park

Term expires January 31, 2014

John Reimer, Republican, Galva

Term expires January 31, 2013

Mark Simpson, Democrat, Lawrence

Term expires January 31, 2013

John Solbach, Democrat, Lawrence

Term expires January 31, 2013

Andy Taylor, Republican, Independence

Term expires January 31, 2014

James Ward, Republican, Lawrence

Term expires January 31, 2014

FY 2012 Commission Staff

Executive Director, Carol Williams
Commission & Staff Attorney, Camille Nohe
Office Manager, Donna Williams
State Candidate Report Examiner, Karina Renna
Local Candidate Report Examiner, Jennifer Schneider
Lobbyist Coordinator, Ruth Pile
IT Specialist, Kelley Cochran
Auditor, Rhiannon Broxterman
Auditor, Open position
Investigator, Bill Beightel

Budget

In FY 2012, the Commission was appropriated \$407,015 from the State General Fund with a fee fund limitation of \$255,975. The following chart reflects revenue and expenditures for the fiscal year.

Fiscal Year 2012 Budget	Actual
Revenue:	
State General Fund Utilized	\$400,440
Fee Fund Utilized	\$168,026
Total Revenue Utilized	\$568,466
Expenditures:	
Salaries & Benefits	\$467,229
Contractual Services	\$ 93,266
Commodities	\$ 7,971
Capital Outlay	\$ 0
Total Expenditures	\$568,466

Legislative Activity

One piece of legislation was enacted by the 2012 Legislature which impacts the Campaign Finance Act. House Substitute for Senate Bill 129 raises the contribution limitation for candidates for the State Board of Education from \$500 per election cycle to \$1,000 per election cycle.

Organization & Operation

The Commission's efforts focus on full compliance with the Kansas campaign finance, conflict of interests, and lobbying statutes. Each year the Commission receives thousands of financial disclosure reports filed by candidates, political and party committees, public officials, and lobbyists. Staff time is devoted to assuring the accurate and timely disclosure of required financial information about those in state and local government. The processing and evaluation of filed reports and statements and an analysis of the supporting records, where appropriate, are crucial to the Commission's efforts. It is through the initial and comprehensive review of these reports, and the later audit and investigation when necessary, that the Commission can determine compliance with the laws.

The Commission's work program encompasses six areas: (1) education and public awareness; (2) advisory opinions; (3) reviews and audits; (4) investigations; (5) enforcement (including the filing of complaints, holding public hearings and assessing civil penalties); and (6) general administrative activities.

Education & Public Awareness

The Commission's goal remains to improve communications regarding the reporting requirements of those subject to one or more of the disclosure laws, and to increase public awareness with respect to the impact and importance of information contained in the reports filed. The Commission's website has become an efficient instrument for disseminating and distributing Commission information. Information concerning the Commission, the advisory opinions it issues, scanned copies of state level candidate, party committee and political action

committee campaign finance reports, campaign finance and lobbying reporting forms, and campaign election and lobbying statistics can be found at www.kansas.gov/ethics.

The Commission utilizes informational brochures, the Internet, the news media, and speaking engagements to inform not only those under the Commission's jurisdiction, but also the public about the laws and their meaning. Statistical information is summarized and printed, in addition to being posted on the Commission's website, in the areas of campaign finance and lobbying. However, most time in this area is devoted to informing those directly covered by the laws of their duties and responsibilities. To accomplish this task, the Commission conducts informational seminars, prepares and distributes handouts, campaign finance handbooks, lobbying handbooks, and conflict of interest laws brochures. In addition, the telephone is used extensively to provide information and advice. In FY 2012, the Commission's staff made fifteen presentations. Eleven speeches were made to state boards and employees of various state agencies, one campaign finance seminar was given, one speech on lobbying, and two speeches were given to civic organizations.

Advisory Opinions

Advisory opinions are issued by the Commission to clarify the application of the statutes in a particular situation. The Commission can issue these opinions on its own initiative or in response to individual inquiries. If an individual requests an opinion and conducts him or herself according to the guidelines in the opinion, he or she is presumed to be in compliance with the law.

Seven opinions were issued in FY 2012. Six opinions were issued in response to inquiries by individuals and one opinion was initiated by the Commission to provide guidance to candidates and office holders subject to the Campaign Finance Act. Since 1974, the year the Commission was established, through June 30, 2012, the Commission has issued a total of 1,210 advisory opinions. A synopsis of each advisory opinion issued in FY 2012 can be found at the conclusion of this report.

FY 2012 Advisory Opinions

Campaign Finance – 4

Lobbying – 0

State Conflict of Interests – 3

Local Conflict of Interests - 0

Review & Audit Program

Complete, accurate and timely disclosure of certain kinds of financial information by candidates, elected officials, state employees and lobbyists is the key requirement of the legislation. It is the Commission's position that active review and auditing of reports is essential for the proper administration of the law.

CAMPAIGN FINANCE

In the area of campaign finance, the Commission's procedures include a preliminary review and post-election comprehensive desk review of all receipts and expenditures reports filed. In addition, a certain number of campaigns and committees are selected for field audits.

Candidates, party committees, and political committees filed only one receipts and expenditures report in FY 2012, a non-election year. A total of 1,169 receipts and expenditures reports received comprehensive desk reviews.

On June 11, 2012, 537 state candidates and 1,168 county candidates filed for office. In the Spring of 2012, 30 first class city candidates filed for office.

Audits

Audits of the records of candidates and political action committees are conducted using generally accepted auditing standards and are conducted on a priority basis. Accorded first priority are situations involving formal complaints. The next priority is assigned to situations in which it is necessary to clarify problems identified during the desk reviews. A general investigation may also be authorized at this point.

Finally, a random sample of candidates and committees is audited. If a candidate is selected for a random audit, his or her opponent is also examined. In FY 2012, twenty-one audits were conducted.

FY 2012 Campaign Finance Statistics

- Candidates for 2012 State Office - 537
- Carryover State Candidates – 318
- Candidates for 2012 County Office – 1,168
- Carryover County Candidates - 97
- Candidates for 2012 First Class City Office – 30
- Carryover First Class City Candidates – 155
- Party Committees - 184
- Political Action Committees – 240
- Campaign Finance Reports Filed – 1,169
- Failure to File Notices Issued – 144
- Error or Omission Notifications Issued - 74

CONFLICT OF INTERESTS

The Kansas conflict of interests statutes provide for (1) the filing of statements of substantial interests; (2) a code of conduct making it illegal for state officials and employees to be involved in certain conflicts; and (3) the issuance of advisory opinions.

The Commission's staff processed and reviewed 6,372 financial disclosure statements filed by state officers, state employees, and candidates running for state office in FY 2012. Computer systems are used to create and maintain lists of state officers and employees subject to the disclosure requirements. Throughout the year, staff updates computer databases as appointments are made, terms end, officials resign, and new positions are created. Financial disclosure forms and instructions are mailed to new appointees and candidates as the Commission receives official notice of their appointment or eligibility. Thereafter, forms and instructions are mailed on an annual basis to all persons subject to filing requirements. All financial disclosure statements are public records and may be reviewed during regular business hours in the Secretary of State's office or on the Secretary of State's website. Those required to file Statements of Substantial Interests are elected state officials and candidates for such office,

individuals whose appointments are subject to confirmation by the Senate, general counsels for state agencies, and state officers, employees, and members of boards, councils or commissions meeting the definition of a “designee” and so listed by the head of their agency.

2012 Statements of Substantial Interests Filings

- **Employees Listed as Designees – 5311**
- **Elected Officials – 187**
- **State Candidates – 302**
- **Appointees Subject to Senate Confirmation – 78**
- **Board Members Listed as Designees – 453**
- **General Counsels - 41**

The Commission has found that the conflict statutes are not widely understood either by state officers, state employees or the public at large, yet these laws are of fundamental importance to the workings of state government. They draw the line between private interests and the public trust which must be guarded carefully. Efforts to clarify and enforce the line are increasingly important as public concern mounts over abuses of the public trust.

Many state officials and employees are in a position to make or influence decisions which could directly affect their personal interests. The state conflict of interest laws prohibit such activity. To assist these individuals, the Commission issues advisory opinions upon its own initiative and upon the request of any person to whom the relevant law applies. In FY 2012, the Commission issued 3 opinions to state officers and employees concerning their positions, personal interests and how the conflict laws applied to them.

REPRESENTATION CASE DISCLOSURE

There were four Representation Case Disclosure Statements filed in FY 2012. It is possible that other individuals required to file such statements have not done so. However, given the structure of the statutory requirements, there is no way of knowing who should file such statements.

LOBBYING PROVISIONS

There are 544 lobbyists registered for calendar year 2012 as of September 1, 2012. This compares with the total of 568 registered lobbyists in 2011. Of the 544 registered, some are registered on behalf of more than one person or organization. To date, 1,522 organizations or persons have been represented this year. This compares to 1,560 organizations being represented by a lobbyist in 2011. The Commission's statistical analysis of the lobbyist employment and expenditures reports filed shows that \$708,647 has been spent on lobbying activities through August 31, 2012. Registered lobbyists are required to file a lobbyist employment and expenditures report six times a year. These reports show expenditures if the lobbyist spent more than \$100 in a reporting period. To date this calendar year, 4,881 Lobbyist Employment and Expenditures Reports have been filed. A lobbyist can file an Affidavit of Exemption from filing the Lobbyist Employment and Expenditures Report if he or she does not expend in excess of \$100 in any reporting period.

Lobbyist Registrations and Expenditures

To Date for Calendar Year 2012

- Number of Registered Lobbyists – 544⁵⁵⁰
- Number of Lobbyist Registration Statements Filed – 1,522
- Number of Reports Filed by Lobbyists – 4,881¹⁵³¹
- Number of Affidavits of Exemption Filed – 510
- Total of Expenditures for Year to Date – \$708,647
- Past Due Notices Mailed – 0
- Number of Failure to File Notices Issued - 161

Investigations

In FY 2012, the Commission initiated 7 inquiries and conducted 12 investigations. Investigations can be conducted prior to a complaint being filed or following the filing of a complaint. Inquiries and investigations remain confidential until a complaint has been filed and a probable cause determination has been made regarding the complaint. Whenever an investigation does not disclose facts sufficient to warrant further action, the Commission may issue a report concerning the findings of the Commission to the person or persons investigated. This report can be made public by the person or persons investigated.

Enforcement Program

COMPLAINTS

There were 10 complaints filed in FY 2012. Nine of the complaints were dismissed on the basis that there was insufficient evidence to support a probable cause determination. One complaint went to public hearing. It should be understood that after an investigation, if the Commission concludes there is no evidence to establish probable cause that there was an intentional violation, a complaint is dismissed and no public hearing is held. Anyone who suspects that any of the provisions administered by the Commission have been violated may file a complaint in writing with the Commission.

CIVIL PENALTIES & FINES

The statutes enforced by the Commission provide for the assessment of civil penalties for failure to file certain reports or statements under the campaign finance, lobbying and state conflict of interest statutes. Individuals can be subject to a \$10 per day penalty for each day the report or statement remains unfiled up to a maximum of \$300. The Commission is authorized to waive any imposed civil penalty, upon a finding of good cause. There were civil penalties totaling \$ 7,910 assessed in FY 2012. The Commission collected \$6,282 in civil penalties and waived \$2,020 in civil penalties. Several civil penalties assessed in prior years were collected in FY 2012 as well as several civil penalties remain outstanding. Some of the civil penalties assessed in FY 2012 have not yet been collected.

In addition to any other penalty prescribed under the campaign finance, lobbying or state conflict of interest statutes, the Commission can assess a civil fine not to exceed \$5,000

for the first violation, \$10,000 for the second violation and \$15,000 for the third and each subsequent violation. Before a civil fine can be assessed, the person must be given proper notice and an opportunity to be heard. The Commission conducted two civil fine hearings in FY 2012. Civil fines in the amount of \$6,250 were assessed and collected in FY 2012.

FY 2012 Civil Penalties and Fines

Campaign Finance Civil Penalties Assessed - \$4,700

Lobbying Civil Penalties Assessed – \$1,570

Statement of Substantial Interests Civil Penalties Assessed - \$1,640

Total Civil Penalties Assessed – \$7,910

Total Civil Penalties Waived – \$2,020

Total Civil Penalties Collected - \$6,282

Total Civil Fines Assessed – \$6,250

Total Civil Fines Collected - \$6,250

Commission Recommendations

The Commission is directed by statute to make recommendations to the Governor and Legislature. It recognizes that any major piece of legislation periodically needs revision, modification, and in some cases, major changes. To that end, the Commission makes the following recommendations:

1. The Commission believes that candidate, political action committee, and lobbyist registration fees should be increased to generate more revenue for the agency's fee fund. Registration fees have not been increased for 12 years. Due to the State's financial difficulties, the Commission's fee fund has been used to make up the shortage of General Fund appropriations to fund the agency's current level of operations the past few years. The carryover fee funds from FY 2012 were \$444,934. The fee funds projected to be carried forward to FY 2016 will be \$100,556. The Commission's fee fund is anticipated to be depleted and the agency will need to rely solely on State General Fund appropriations to fund the agency's operations in FY 2017. The fee fund is expected to provide \$154,485 in funding for FY 2013 and \$155,420 in 2014. To keep the fee fund viable, an increase in fees will be required.
2. K.S.A. 46-268(b) permits any lobbyist who expects to expend an aggregate amount of less than \$100 for lobbying in each reporting period in the calendar year to file an affidavit of such intent. Even though a lobbyist who files an affidavit does not have to file the periodic reports during the calendar year, the lobbyist is required to file a report on or before January 10 of the subsequent year disclosing all reportable expenditures made in the preceding year. The Commission believes this January report is redundant and should be eliminated. A lobbyist who is qualified to file an affidavit has nothing to disclose on the required January report. The elimination of this report would save on printing and postage, as well as staff time in processing these reports.
3. K.S.A. 46-222 defines a lobbyist to mean "(1) Any person employed in considerable degree for lobbying; (2) any person formally appointed as the primary representative of an organization or other person to lobby in person on state-owned or leased property; or (3) any person who makes expenditures in an aggregate amount of \$100 or more, exclusive of personal travel and subsistence expenses, in any calendar year for lobbying." The Commission believes the threshold for defining a lobbyist to be a person who makes expenditures of \$100 or more should be raised to one who makes expenditures in an amount of \$500 or more in a calendar year. The current threshold of \$100 has been in statute since 1974. Due to inflation, the Commission believes this threshold should be raised.

Appendix I

**SUMMARY
OF
ADVISORY OPINIONS
ISSUED IN
FY 2012**

OPINION NO. 2011-06 - Issued September 28, 2011

An incumbent sheriff who is running for re-election for the office of sheriff, or a deputy sheriff who is running for election for the office of sheriff: (1) may use a sheriff's department vehicle to attend election activities, but (2) may not use a photograph or other electronic image of a sheriff's department vehicle in campaign literature or advertisements.

OPINION NO. 2011-07 - Issued September 28, 2011

Legislators may expend approximately \$65 each from their respective campaign funds to provide drinking water in the state capitol legislative offices for visitors and staff.

OPINION NO. 2011-08 - Issued September 28, 2011

In state governmental ethics issues that pertain to the solicitation of any gift, economic opportunity, loan, gratuity, special discount or service provided because of such person's official position in the executive branch of state government, K.S.A. 2010 Supp. 46-237a is considered the applicable statute.

OPINION NO. 2012-01 - Issued February 15, 2012

Under the state conflict of interest laws, a Team Evaluator with the Department of Aging is not prohibited from accepting future employment with any of the selected KanCare vendors since she did not participate in the making of a contract, in her state capacity, with any of the potential KanCare vendors.

OPINION NO. 2012-02 - Issued February 15, 2012

A Kansas Lottery employee may sign up for a casino's "Players Club" card, with member benefits, like any member of the general public. In addition, a lottery employee may receive a discounted or free meal from a casino so long as the value of any meal is \$25 or less.

Opinion No. 2012-03 - Issued April 18, 2012

Advisory Opinion 2012-03 clarifies what does and what does not constitute a public service announcement or advertisement as it applies to appearances made by state or local candidates in the time period 60 days prior to the date of the primary election through the day of the general election.

OPINION NO. 2012-04 - Issued June 12, 2012

A legislative candidate can transfer campaign funds from his former campaign account to his subsequent campaign account if the candidate is running for a seat in the same legislative chamber.

Appendix II

**STATISTICAL
COMPARISON OF
LOBBYING
EXPENDITURES
2002 - 2012**

**SUMMARY OF LOBBYIST REGISTRATIONS AND EXPENDITURES
2000-2010**

Year to Date	Number of Lobbyists/ Registrations		Food & Beverage	Recreation	Entertainment Gifts Honoraria and Payments	Mass Media	Communications	Other	Total
2000	555	1263	414,197.05	12,573.25	16,335.70	1,814.30	37,164.29	13,976.04	496,060.63
2001	583	1378	367,343.10	12,408.11	26,320.26	18,842.30	41,418.57	28,086.85	494,419.19
2002	558	1329	335,366.13	13,294.82	21,975.31	5,325.88	79,886.09	16,693.73	472,541.96
2003	587	1396	369,114.67	15,844.26	20,693.29	33,954.74	33,800.07	14,099.33	487,506.36
2004	574	1387	328,854.76	15,382.55	24,974.60	108,783.10	110,322.63	5,656.65	593,974.29
2005	561	1287	463,164.76	11,508.06	22,007.16	24,548.51	24,578.31	14,398.57	560,205.37
2006	554	1376	429,510.28	13,260.92	21,821.84	412,395.48	54,433.56	7,322.64	938,744.72
2007	556	1401	505,234.60	12,197.14	19,805.07	573,045.29	39,101.18	20,689.72	1,170,073.00
2008	592	1476	466,685.50	16,705.96	14,644.60	553,355.97	262,018.80	17,841.46	1,331,252.29
2009	582	1513	425,089.20	14,796.49	12,967.70	259,965.44	437,997.76	24,998.41	1,175,815.00
2010 YTD	520	1495	374,064.45	9,443.89	9,822.94	632,479.00	305,535.43	14,371.22	1,345,716.93