



GOVERNMENTAL ETHICS COMMISSION

<https://ethics.kansas.gov>

Opposition Testimony on HB 2519
Thursday, February 15, 2024
House Committee on Elections

Thank you for the opportunity to provide testimony regarding HB 2519.

The Commission is neutral with respect to the merits of this bill. However, the current text of the bill is significantly problematic and would make enforcement of paid-for attribution difficult. A recommended amendment is attached to this testimony that would achieve the intended goals while not creating issues in statutory text.

CURRENT LAW

As you likely remember, there are two separate statutes that affect paid-for attribution in Kansas. A chart is attached to this testimony for reference.

Express advocacy for or against candidates that are subject to the Campaign Finance Act (generally, state candidates, county candidates, or first class city candidates) usually must have paid-for attribution. The Governmental Ethics Commission has jurisdiction to enforce this requirement.

Express advocacy for or against candidates for offices outside of the Campaign Finance Act (such as second- and third-class cities, school boards other than Wichita, etc.) sometimes require paid-for attribution as well, though it is up to prosecutors to enforce this requirement.

This second statute – sometimes referred to as the “election crimes” paid-for requirement due to the statutory article it falls under – also includes paid-for requirements when someone is attempting to influence the vote of someone on a constitutional amendment or a local ballot issue.

It appears that the intention of HB 2519 is to move constitutional ballot advocacy paid-for attribution enforcement under the purview of the Ethics Commission. There are good reasons for that change; primarily, prosecutors are unlikely to have the resources necessary to prosecute violations of the law as it stands. At risk of repetition, the Commission is neutral with respect to the merits of that change.

BILL TEXT ISSUES

The bill has a number of issues with the current draft. It is understandable how this text was arrived at, but as drafted, it creates a very convoluted text that is difficult to follow or enforce. Were the current

text to become law, it is likely that existing enforcement of paid-for attributions would be negatively impacted.

1. *Eliminating the Limitation on Electronic Paid-For Attribution (page 2, line 42-page 3, line 1)*

Under current law, electronic communications with express advocacy only must include paid-for attribution if they are written by a candidate, PAC, or party committee. HB 2519 in its current form deletes this limitation, applying the requirement to everyone. This text means that anyone sharing even a Facebook post promoting a candidate or discussing a ballot issue would have to include paid-for attribution. There would be thousands of violations daily.

2. *Creating Definitional Confusion (page 1, lines 17-20)*

HB 2519 has very confusing language. The bill includes:

(b) (1) Except as provided in paragraph (2), corrupt political advertising of a state or local office *or that is intended to influence the vote of any person for or against any proposition to amend the constitution or to authorize the issuance of bonds or any other question submitted at an election* is:

The italicized section is added here in the bill, but should not occur here. This is defining corrupt political advertising – adding extra language that does not read cleanly to what is being defined makes little sense. The confusion is compounded since the same language appears in the subsections. For example, (b)(1)(A) includes the addition of “of a question submitted to amend the constitution to authorize the issuance of bonds or any other question submitted at an election.”

3. *Legibility impacts enforceability*

The new subsections have convoluted wording that is subject to multiple possible interpretations. For example, part of (b)(1)(A) which reappears in each subsection reads: “...expressly advocates the nomination, election or defeat of a clearly identified candidate for a state or local office of a question submitted to amend the constitution to authorize the issuance of bonds or any other question submitted at an election...”

First, this language appears to require express advocacy for the paid-for attribution on constitutional amendments and bond issuance, which conflicts with language elsewhere.

Second, the inability to reasonably parse this sentence means that even existing enforcement for paid-for attribution becomes unclear, since express advocacy for a state or local office is not “of a question submitted to amend the constitution.” If challenged, it is entirely possible that *no* paid-for attribution would be enforceable.

I won't belabor the point further. The idea may well be sound and the Commission takes no position with respect to the fundamental merits. Were the bill corrected as indicated in the attachment, this testimony would be very short and neutral.

| | K.S.A. 25-4156 | K.S.A. 25-2407 |
|--------------------------------------|---|---|
| Who enforces | Gov't Ethics Commission Prosecutors (theoretically) | Prosecutors |
| Penalty | Ethics fine up to \$5000 Class C Misdemeanor | Class C Misdemeanor |
| Trigger | Express advocacy | Express advocacy (about candidates) Intended to influence a vote (for constitutional amendment or bond issues) |
| Communications affected | About candidates subject to the Campaign Finance Act (generally statewide through first class cities) | About candidates NOT subject to the Campaign Finance Act (generally second and third class cities, school boards, etc.) Influencing votes on constitutional amendments Influencing votes on local questions such as bond issues |
| Paid newspaper/periodical ads | Yes | Yes |
| Paid radio/TV ads | Yes | Yes |
| Paid telephone calls/texts | Yes | No |
| Brochures/fliers/fact sheets | Yes, unless by an individual who expends <\$2500/year | Yes, for constitutional amendments and local questions such as bond issues. No for candidate advocacy. |
| Electronic communications | Yes, if by a campaign/PAC/party and sent to or viewed by >25 people | No |

Recommended Amendment: Remove all changes in bill, replace with:

25-4156. Charges for space in newspapers and other periodicals; excess charges; corrupt political advertising;

misdemeanor. (a) (1) Whenever any person sells space in any newspaper, magazine or other periodical to a candidate or to a candidate committee, party committee or political committee, the charge made for the use of such space shall not exceed the charges made for comparable use of such space for other purposes.

(2) Intentionally charging an excessive amount for political advertising is a class A misdemeanor.

(b) (1) Except as provided in paragraph (2), corrupt political advertising of a state or local office is:

(A) Publishing or causing to be published in a newspaper or other periodical any paid matter that expressly advocates the nomination, election or defeat of a clearly identified candidate for a state or local office, unless such matter is followed by the word "advertisement" or the abbreviation "adv." in a separate line together with the name of the chairperson or treasurer of the political or other organization sponsoring the same or the name of the individual who is responsible therefor;

(B) broadcasting or causing to be broadcast by any radio or television station any paid matter that expressly advocates the nomination, election or defeat of a clearly identified candidate for a state or local office, unless such matter is followed by a statement that states: "Paid for" or "Sponsored by" followed by the name of the sponsoring organization and the name of the chairperson or treasurer of the political or other organization sponsoring the same or the name of the individual who is responsible therefor;

(C) telephoning or causing to be contacted by any telephonic means including, but not limited to, any device using a voice over internet protocol or wireless telephone, any paid matter that expressly advocates the nomination, election or defeat of a clearly identified candidate for a state or local office, unless such matter is preceded by a statement that states: "Paid for" or "Sponsored by" followed by the name of the sponsoring organization and the name of the chairperson or treasurer of the political or other organization sponsoring the same or the name of the individual who is responsible therefor;

(D) publishing or causing to be published any brochure, flier or other political fact sheet that expressly advocates the nomination, election or defeat of a clearly identified candidate for a state or local office, unless such matter is followed by a statement that states: "Paid for" or "Sponsored by" followed by the name of the chairperson or treasurer of the political or other organization sponsoring the same or the name of the individual who is responsible therefor.

The provisions of this subparagraph (D) requiring the disclosure of the name of an individual shall not apply to individuals making expenditures in an aggregate amount of less than \$2,500 within a calendar year; or

(E) making or causing to be made any website, e-mail or other type of internet communication that expressly advocates the nomination, election or defeat of a clearly identified candidate for a state or local office, unless the matter is followed by a statement that states: "Paid for" or "Sponsored by" followed by the name of the chairperson or treasurer of the political or other organization sponsoring the same or the name of the individual who is responsible therefor.

The provisions of this subparagraph (E) requiring the disclosure of the name of an individual shall apply only to any website, email or other type of internet communication that is made by the candidate, the candidate's candidate

committee, a political committee or a party committee and the website, email or other internet communication viewed by or disseminated to at least 25 individuals. For the purposes of this subparagraph, the terms "candidate," "candidate committee," "party committee" and "political committee" shall have the meanings ascribed to them in K.S.A. 25-4143, and amendments thereto.

(F) publishing, broadcasting, or causing to be published in a newspaper, periodical, or any radio or television station any paid matter which is intended to influence the vote of any person or persons for or against any question submitted for a proposition to amend the constitution, unless such matter is followed by the word "advertisement" or the abbreviation "adv." in a separate line together with the name of the chairman of the political or other organization inserting the same or the name of the person who is responsible therefor;

(G) telephoning or causing to be contacted by any telephonic means including, but not limited to, any device using a voice over internet protocol or wireless telephone, any paid matter which is intended to influence the vote of any person or persons for or against any question submitted for a proposition to amend the constitution, unless such matter is preceded by a statement that states: "Paid for" or "Sponsored by" followed by the name of the sponsoring organization and the name of the chairperson or treasurer of the political or other organization sponsoring the same or the name of the individual who is responsible therefor;

(H) publishing or causing to be published any brochure, flier or other political fact sheet which is intended to influence the vote of any person or persons for or against any question submitted for a proposition to amend the constitution, unless such matter is followed by a statement which states: "Paid for" or "Sponsored by" followed by the name of the sponsoring organization and the name of the chairperson or treasurer of the political or other organization sponsoring the same or the name of the individual who is responsible therefor. The provisions of this subparagraph (G) requiring the disclosure of the name of an individual shall not apply to individuals making expenditures in an aggregate amount of less than \$2,500 within a calendar year;

(I) making or causing to be made any website, e-mail or other type of internet communication which is intended to influence the vote of any person or persons for or against any question submitted for a proposition to amend the constitution, unless the matter is followed by a statement that states: "Paid for" or "Sponsored by" followed by the name of the chairperson or treasurer of the political or other organization sponsoring the same or the name of the individual who is responsible therefor. The provisions of this subparagraph (H) requiring the disclosure of the name of an individual shall apply only to any website, email or other type of internet communication that is made by the candidate, the candidate's candidate committee, a political committee or a party committee and the website, email or other internet communication viewed by or disseminated to at least 25 individuals. For the purposes of this subparagraph, the terms "candidate," "candidate committee," "party committee" and "political committee" shall have the meanings ascribed to them in K.S.A. 25-4143, and amendments thereto.

(2) The provisions of subsections (b)(1)(C), (b)(1)(E), (b)(1)(G), and (b)(1)(I) ~~and (E)~~ shall not apply to the publication of any communication that expressly advocates the nomination, election or defeat of a clearly identified candidate for state or local office, if such communication is made over any social media provider which has a character limit of 280 characters or fewer.

(3) Corrupt political advertising of a state or local office is a class C misdemeanor.

(c) If any provision of this section or application thereof to any person or circumstance is held invalid, such invalidity does not affect other provisions or applications of this section that can be given effect without the invalid application or provision, and to this end the provisions of this section are declared to be severable.