

MINUTES OF THE HOUSE GOVERNMENTAL ORGANIZATION AND ELECTIONS.

The meeting was called to order by Chairperson Lisa Benlon at 3:35 p.m. on February 16, 2000 in Room 521-S of the Capitol.

All members were present except: Doug Johnston (E)
 Peggy Palmer (A)
 John Topliker (A)
 Billie Vining (E)

Committee staff present: Dennis Hodgins, Research
 Mary Galligan, Research
 Theresa Kiernan, Revisor
 Dee Woodson, Committee Secretary

Conferees appearing before the committee: Representative Tim Carmody
 Dan Hermes, Governor's Office
 Dana Fenton, Johnson County
 Larry McAulay, Asst. County Counselor, Johnson County
 Terry Humphrey, Kansas Trial Lawyers Association
 Kathy Sexton, Sedgwick County (written testimony)
 Erik Sartorius, Johnson County Board of Realtors
 (written testimony)

Others attending: See attached list.

HB 2346 - Campaign finance; political committees established by members of legislature

Chairperson Benlon opened hearings on **HB 2346**.

Representative Tim Carmody explained what PAC's (Political Action Committee) are and how they are formed. He testified one of the purposes of a political committee can be to make contributions or expenditures for the nomination, election or defeat of a clearly identified candidate for state or local office. He stated a political committee can be formed by any two or more people at any time, and it may accept donations and contributions in any amount at any time, which he saw as a problem. He added that such committees may accept contributions during the legislative session from registered lobbyists, other political committees or any other person. Representative Carmody also said there was no limit to the number of political committees a legislator could set up. He stated that this bill would prohibit legislators, members elect, or candidates for election to the Legislature from serving as officers or directors of a political committee which expressly advocates, or makes contributions or expenditures, for the nomination, election, or defeat of a clearly identified candidate for the Legislature. Representative Carmody elaborated that the bill excludes candidate committee and party committees from the definition of political committee. He said he believes that the campaign finance act never intended to allow a method to avoid the restrictions on contributions to political campaigns, and asked that the loophole be closed. He stood for questions. (Attachment 1)

General questions and discussion followed regarding: what happens to the PACs that are already in existence and operating, how does this affect the Republican House Campaign PAC, limitations of money coming out of the PACs, and what happens to the PAC money when the PACs are dissolved.

Representative Shriver asked if he would be able to set up a PAC and receive contributions during the legislative session through the PAC?

Representative Carmody responded both yes and no. He said the way he understood the campaign finance committee that the legislator would set up could accept contributions in an unlimited amount from a lobbyists or

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anything, but that a political committee could not make contributions to you or your candidate committee during the session period.

Dan Hermes, Director of Governmental Affairs for the Governor, testified as a neutral party, and explained that this bill extends the ban to recognized party committees of the House and Senate and individual leadership political committees. He said currently that contributions to state-wide elected officials and candidates, as well as legislators or candidates for the legislature, are prohibited between January 1 and sine die except for contributions from individuals. He clarified that the current law in place is to prevent solicitation of contributions while the legislature is considering changes in law. Mr. Hermes further added that this bill is a continuation of the effort to make sure solicitations do not take place at a time where special interest have matters being voted on by the legislature. He said the Governor had a bill introduced in the Senate, waiting floor action, that also related to leadership PACS as well as the four political committees previously mentioned by Representative Shriver. (Attachment 2)

There were no opponents to this bill, and following questions from the Committee, the Chair closed hearings on **HB 2346**.

Chairperson Benlon opened the hearings on **HB 2738**.

Dana Fenton, Intergovernmental Relations Coordinator for Johnson County spoke in support of **HB 2738**, and his testimony covered Section 1 of the bill. He said Johnson County was seeking legislative clarification of its home rule powers. He stated the bill was also supported by Sedgwick County, Kansas Association of Counties, and the Johnson County Board of Realtors. He explained that this bill would provide counties the express power to sell, lease, license, market and copyright computer software that a county had (1) developed in-house or (2) contracted with a private vendor to develop. He stated this bill is modeled after similar legislation in the states of Florida, Texas and Maryland. Mr. Fenton said that Johnson County would probably work through private vendors to market the computer software as they do not want to get into the software business, but feel that other counties could benefit from this specialized software system. He stated that Johnson County would benefit by receiving royalties, the private vendor would gain by obtaining more business and profits, and the buyer of the software would realize a benefit by knowing that the product had been used successfully by the owner. He stood for questions. (Attachment 3)

F. Lawrence McAulay, Jr., Assistant County Counselor for Johnson County, testified in support of **HB 2738**, and helped draft the proposed language in this bill after reviewing what several other states had litigated. Cynthia Dunham, Assistant County Counselor for Johnson County, accompanied him and was available to assist in answering any questions. She had co-drafted this bill with Mr. McAulay. He said this bill would give Kansas counties specific authorization to sell, lease, license, market or otherwise distribute computer software for commercial or noncommercial use to any other public or private entity or individual, adopt fees and prices, copyright software, and other authority detailed in the bill. He communicated that Johnson County recognized and supported its statutory Home Rule authority found in K.S.A. 19-101 et seq. Mr. McAulay felt that the County had amply authority under Home rule to allow it to sell software it had developed under contract with an outside vendor. He expressed that counties today are heavily dependent on software, and the software needed by government is not always available in the private market; therefore, it is sometimes necessary to have software developed either in-house or through an outside firm. He said this can be very costly and involve a lot of time and effort. He added that any warranties or other responsibilities between the selling county and the buyer would be adequately handled by the sale contract and by general contract and warranty law. Mr. McAulay stated that once an effective software program is developed, other counties may find it of value to use the same software, and it may be cost effective for the buyer to pay the selling county for the software instead of having their own developed. He further explained that this software is not suitable for personal use of individual consumers as it is developed by counties in some form of governmental service. His final comment was that government at all levels is under intense pressure to reduce taxes and to find alternative revenues sources, and the sale of software is a way that counties can increase revenues and at the same time promote public safety and government efficiency. (Attachment 4)

General questions and discussion from the Committee members followed regarding: whether Johnson County developed the software themselves or if it was done by an outside vendor; definition of municipalities vs. county;

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clarification of data in software and possibility of losing information, software that was contracted for development for the county belongs to the county, provisions of copyright for the software that was created, and the question of competing unfairly with the private sector using tax dollars. Representative Welshimer expressed a concern that the bill should possibly be limited to buyers for governmental entities only.

Representative Huff raised the question of liability when selling this software to another county, and stated if the buyer knows up front about the liability issue he could not see a problem. Mr. McAuley responded that the County would be selling the product “as is”, and most likely they would be dealing with sophisticated buyers and consumer protection would not be involved in this instance.

Discussion continued concerning use of data in software to solicit sales of other merchandise, i.e. car sales and also the filing of claims for defective software. Mr. McAuley and Ms. Dunham answered that this would involve the Open Records Act, and that the data would not be sold with the software. Ms. Dunham said the buyer would only be getting the software setup.

Written testimony in support of **HB 2738** was submitted for Kathleen B. Sexton, Director of Information & Operations for Sedgwick County. Marci Hess, Governmental Relations for Sedgwick County, made the statement that this was a platform item on Sedgwick County’s platform, and strongly supported the passage of this bill by the Sedgwick County Board of Commissioners. (Attachment 5)

Erik Sartorius, Governmental Affairs Director of Johnson County, submitted written testimony in support of **HB 2738**. (Attachment 6)

Terry Humphrey, Executive Director of the Kansas Trial Lawyers Association, appeared in opposition of **HB 2738**. She said that this bill proposes to amend the Kansas Tort Claims Act to provide complete immunity to any municipality which seeks to develop, trademark and sell computer software to any other public or private entity or individual. She testified that this immunity would give municipalities a tremendously unfair advantage over private corporations who sell software; but, remain accountable to their customers for the quality and integrity of their product. She stated with this proposed amendment to the Tort Claims Act, a municipality would have no such accountability and their purchasers would have no recourse. (Attachment 7)

Representative O’Connor asked for clarification from Ms. Humphrey as to whether she and her Association were objecting to the warranty issue. Ms. Humphrey clarified that their only objection was to the immunity provision in the Tort Claim section of the bill, and that they did not object to the sale of software by the municipalities.

General questions and discussion followed relating to: the difference in the immunity provision for geological purposes vs. real estate purposes, continuance of technical support from the software company after purchase, the possibility of restricting originator of software program to future earnings, the effective date, and what happens to funds within PAC upon dissolving. Due to the latest in the hour of day, the Chair suggested delaying further discussion on this bill until the actual working of the bill.

The Chair closed the hearings on **HB 2738**.

Chairperson Benlon called for discussion and final action on **HB 2346**.

Representative Powers made a motion to to favorable pass this bill out as amended and updated. The motion was seconded by Representative Welshimer.

Representative O’Connor raised a concern with the wording in the bill and asked for the Revisor to work up a balloon of the bill to insure correct wording by the Committee. She said that since she was on the Board of Directors of a PAC and also a legislator, she was apprehensive about the difficult position this bill placed her in. She stated she was not opposed to the bill, but wanted accurate wording within the bill.

Representative Powers withdrew his motion to pass out of Committee, and Representative Welshimer withdrew her second. The Chair announced that discussion on this bill would be continued at the next meeting.

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Chairperson Benlon adjourned the meeting at 5:25 p.m. The next meeting of the Governmental Organization and Elections Committee will be Monday, February 21, 2000, at 3:30 p.m., Room 521-S.