

SESSION OF 2004

**CONFERENCE COMMITTEE REPORT BRIEF ON
HOUSE SUBSTITUTE FOR SENATE BILL NO. 376**

As Agreed to April 2, 2004

Brief *

House Sub. for SB 376, as amended, would modify the Kansas Campaign Finance Act to (1) authorize the transfer of campaign funds in certain circumstances; and (2) allow a candidate to sign the treasurer's report. The bill would also exempt certain entertainment, food, or hospitality items from lobbyists' reporting requirements. Specifically, the bill would:

- ! Permit a candidate or candidate committee to transfer campaign funds to a bona fide successor committee or candidacy established by the candidate, provided all money is transferred to the bona fide successor committee or candidacy.
- ! Define the term "Bona fide successor committee or candidacy" (currently contained, but not defined, in administrative rules and regulations) to mean (1) the candidate's campaign committee or candidacy for a public office initiated at the *termination* of the original candidacy; or (2) the candidate's campaign committee or candidacy initiated at the time of the *transfer* of all money to a new campaign committee or candidacy for public office when debt exists in the original campaign at the time of the transfer and the candidate does not terminate the original committee or candidacy.
- ! Clarify that the transfer of funds to a bona fide successor committee or candidacy is not considered a contribution.
- ! Permit the transfer of residual funds for the purpose of retiring the remaining debt to the original committee or candidacy from which funds were transferred (when they were transferred to the bona fide successor committee or candidacy). In this instance, the

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candidate may only accept contributions to the original candidacy sufficient to retire the debt, and the contributions are subject to the original contribution limits.

- ! Define “public office” to include both local and state offices. (**Note:** Local offices to which the Campaign Finance Act applies include governing body members of cities of the first class, and elected offices of counties, school districts with more than 35,000 students, and the Kansas City Board of Public Utilities. Applicable state offices include those elected on a statewide basis, state senators and representatives, members of the State Board of Education, district judges, district magistrate judges, and district attorneys.)
- ! Deem all campaign transfers occurring between January 1, 1976 and the effective date of this act to be in compliance with the Campaign Finance Act in existence at the time of the transfer, regardless of when the original campaign fund is closed after the transfer is made.
- ! Allow a candidate for state or local office to sign required campaign treasurer’s reports in lieu of the candidate’s treasurer or the treasurer of the candidate’s committee.
- ! Exempt from lobbyists’ reporting requirements the following:
 - ” Entertainment or hospitality (*i.e.*, recreation, food and beverages) provided at an event to which have been invited all members of a legislative committee.
 - ” Hospitality (*i.e.*, food and beverages) provided at any of various forums by any national, nonprofit or nonpartisan organization to serve legislators of more than one state in an educational or informational capacity.
- ! Exempt from lobbyists’ reporting requirements any individual meal valued at \$15 or less.
- ! Specify the information items which must be reflected in lobbyists’ records of food and beverage purchases provided as hospitality; and distinguish between records requirements for food and beverages provided between July 1, 2000 and this act’s effective date, and those provided from the effective date of this act.

- " ***For food and beverages provided between July 1, 2000 and this act's effective date:*** Lobbyists shall have maintained vendor receipts. Records supporting the provision of the food and beverages provided include the date when and place at which the food and beverages were provided, the total cost of the food and beverages provided, and a list of individuals to whom the food and beverages were provided.

- " ***For food and beverages provided after the effective date of this act:*** The actual vendor receipt must show the date when and place at which the food and beverages were provided and the total cost of the food and beverages provided. In addition, the receipts must itemize the items consumed, unless the vendor's policy is not to provide an itemized receipt to any of such vendor's customers (in which case such must be noted in the lobbyist's record). A list of the individuals to whom the food and beverages were provided must also be maintained.

! Make the bill's provisions effective on the date of its publication in the *Kansas Register*.

Conference Committee Action

In Conference Committee, the Senate conferees agreed to the House amendments to the bill, with the following exceptions and revisions:

- ! Eliminate entertainment from the lobbyists' reporting exemption regarding items provided at any of various forums by any national, nonprofit or nonpartisan organization to serve legislators of more than one state in an educational or informational capacity.

- ! Reduce the amount, from \$25 to \$15, of individual meals which may be exempted from the lobbyists' reporting requirement.

- ! Clarify and restructure the itemization requirement regarding lobbyists' reporting of food and beverages provided as hospitality.

- ! Make technical changes.

Background

On December 15, 2003, the Kansas Supreme Court ruled that the Campaign Finance Act (Act) prohibited former State Representative Carlos Mayans from transferring unused legislative campaign funds to his campaign for election to be mayor of Wichita. This ruling came after the Kansas Governmental Ethics Commission (KGEC) had issued several opinions, over a number of years, stating that such transfers were permitted under the Act. Former Representative Mayans had sought and received such an opinion. He also received an opinion from the Wichita city attorney that the transfer would not violate a Wichita ordinance dealing with campaign finance.

The Supreme Court, in *Cole v. Mayans and Kenton*, Kansas Supreme Court Case No. 89,715, disagreed with the KGEC's interpretation and overruled the trial court and the Court of Appeals, stating:

"We hold that the Campaign Finance Act and the related regulations, when coupled with the purpose for the Campaign Finance Act, must be construed to limit the transfer of campaign contributions from a candidate's campaign account for a specific office to the same candidate's campaign account for election to that same office. Thus, there are only two situations in which the transfer can be made. The first is when an incumbent runs for reelection to the same office. The second is when a candidate loses an election for a specific office but seeks reelection to the same office in a subsequent election." (Opinion pg. 16) (Emphasis added)

The Supreme Court further suggested the Legislature (a) define the term "bona fide successor candidacy," which is currently contained (but not defined) in KGEC administrative rules and regulations, and (b) require the KGEC to promulgate rules and regulations for the "orderly return of contributions to donors who have contributed to a candidate for a specific office but do not want to contribute to the same candidate if he or she decides to run for a different office."

The KGEC executive director testified that the bill would codify the previous opinions the KGEC has issued on the subject since 1976. Since that year, the Commission has issued eight advisory opinions to legislators and other individuals regarding whether excess campaign funds could be transferred to a campaign for another state or local office. In all eight opinions, the Commission had stated these transfers

are permissible and do not constitute contributions. A minimum of 60 candidates have made such transfers over the years.

Proponents of the bill as introduced were Senate President Dave Kerr and Wichita Mayor Carlos Mayans. No one appeared in opposition to the measure.

Currently, KSA 25-4148 requires every treasurer to submit reports at several different intervals during and after a campaign for state or local office. By statutory definition, "treasurer" includes (though is not limited to) a treasurer of a candidate or of a candidate committee. KSA 25-4151 currently requires the treasurer to sign the campaign treasurer's reports. According to the Kansas Governmental Ethics Commission, the signor of the report is the one responsible for any errors or omissions contained in the report.

The Senate Committee on Elections and Local Government amended the bill to (1) eliminate all prospectively applied codifications of previous KGEC opinions, and (2) provide only for validation of all campaign transfers occurring between January 1, 1976 through December 31, 2003.

The Senate Committee of the Whole amended the bill to add the prospectively applied provisions relating to transfer of residual funds and transfer to a bona fide successor committee or candidacy.

The House Committee on Ethics and Elections amended the provisions in SB 376 (and then passed it as a substitute bill) to increase contribution limitations, allow a candidate to sign the treasurer's report, and exempt certain entertainment or hospitality items from lobbyists' reporting requirements. A technical amendment was also adopted.

The House Committee of the Whole amended the bill to:

- ! Eliminate the exemption from lobbyists' reporting requirements entertainment or hospitality provided at an event to which have been invited all members of a legislative delegation.
- ! Exempt from lobbyists' reporting requirements any individual meal valued at \$25 or less.
- ! Return to current law the contribution limits for the offices of House of Representatives member, State Senator, and others.

A fiscal note on the amended bill was not available at the time of passage.