



October 5, 2023

To: Special Committee on Governmental Ethics Reform, Campaign Finance Law

From: Jillian Block, Research Analyst

Re: Kansas Governmental Ethics Commission History

HISTORY OF THE KANSAS GOVERNMENTAL ETHICS COMMISSION

This memorandum provides an overview of the history of the Kansas Governmental Ethics Commission, as it is currently named, and, in general terms, its duties and powers.

Committee on Governmental Ethics, 1970 – 1974

1970 Sub. for SB 433 established the Committee on Governmental Ethics (Committee) to render advisory opinions on the interpretation or application of the conflict-of-interests law. The bill repealed conflict-of-interests law enacted with 1967 HB 1363 and enacted similar conflict of interest provisions with much broader coverage. The 1970 bill also required the Secretary of State to issue a uniform form to be used by all persons required to file disclosure of substantial interests.

The Committee was composed of five members, two of whom were appointed by the Governor, one by the Chief Justice of the Supreme Court, one by the President *Pro Tem* of the Senate, and one by the Speaker of the House. None of the members could be a public officer or employee.

The members were appointed to four-year terms after the first staggered round of appointments. Any person who requested and received an advisory opinion requested from the Committee and acted in accordance with the opinion's provisions was to be presumed to have complied with the general conflict of interest law. [Note: KSA 25-4159, added in 1981, contains a similar provision regarding the Campaign Finance Act.]

Governmental Ethics Commission, 1974 – 1981

1974 House Sub. for SB 656, the Campaign Finance Act (Act), established the Governmental Ethics Commission (Commission) to administer and enforce the Act. The Commission consisted of 11 members, 3 of which were appointed by the Governor, 2 by the President of the Senate, 2 by the Speaker of the House, 1 by the Minority Leader of the House,

1 by the Minority Leader of the Senate, and 2 by the Chief Justice of the Supreme Court. The Commission was authorized to, among other things, render opinions concerning the interpretation of the Act and investigate complaints of violations of the Act.

The bill provided for full disclosure of all campaign contributions and expenditures in elections for state officials by all candidates, political parties, and political committees. The bill established requirements for candidates to appoint treasurers or committees that appoint treasurers, requirements for party committees and political committees to appoint chairmen and treasurers, and requirements for reports from such treasurers. It also required reports from contributors meeting certain specifications, limited aggregate contributions and expenditures for specified elections, and made intentional violation of the Act a class A misdemeanor that would subject a legislator or an impeachable state officer to possible removal from office.

Separately, **1974 SB 689** gave the Commission the responsibility to promulgate rules and regulations to administer ethical conduct standards for state officers and employees as outlined in statutes designated since 1998 as the State Governmental Ethics Law (Ethics Law) and registration and regulation of lobbyists. The bill, which enacts some provisions regarding the Commission that are redundant to those in 1974 House Sub. for SB 656, also created law regarding the disclosure of substantial financial interests. **1974 SB 1017** additionally required the Commission to promulgate rules and regulations under a separate, less comprehensive conflict of interest law covering local government officers and employees. This is the only area in which the Commission's authority extended to the local level.

1975 Senate Sub. for HB 2483 cleaned up technical matters within the Act, including adding definitions, adding deadlines, and specifying procedures under certain circumstances. **1975 HB 2625** made similar changes to the Ethics Law. It abolished the Governmental Ethics Commission created in 1974 but created a new Governmental Ethics Commission, a successor in every way to the powers, duties, and function of the 1974 version, to which the Governor would appoint five members, not more than three of them of the same political party, and the Chief Justice would appoint none, directed the Commission to appoint an Executive Director, and authorized the Commission to employ other staff and attorneys.

The constitutionality of the Campaign Finance Act was challenged in *State v. Kearns* (229 Kan.207(1981), 623 P.2d 507). The Kansas Supreme Court found the entire Act to be unconstitutional because the enacting clause said "be it resolved by the legislature of the State of Kansas" instead of "be it enacted . . ." as directed by Article 2, § 20 of the *Kansas Constitution*.

The Kansas Public Disclosure Commission, 1981 – 1991

1981 House Sub for SB 325 reestablished the Campaign Finance Act and abolished the Governmental Ethics Commission. In its place, the Kansas Public Disclosure Commission was established, consisting of five members, with one appointed by the Governor, one by the President of the Senate, one by the Speaker of the House, one by the Minority Leader of the Senate, and one by the Minority Leader of the House. All the duties and functions of the Commission under the Act were transferred to Kansas Public Disclosure Commission, including the investigation and hearing of complaints. The bill also provided that the Kansas Public Disclosure Commission "may," as opposed to "shall," appoint an executive director.

1988 SB 157 and **1988 SB 252** granted the Kansas Public Disclosure Commission the authority to request subpoenas and subpoenas *duces tecum* to investigate violations of the Act

and Ethics Law from an administrative judge of the District Court of Shawnee County. [Note: subpoena *duces tecum* is a Latin phrase that orders a person to bring documents to court.] The bills also added authority for the Commission to assess a civil fine for violation of the Act, issue orders to cease and desist, bring action to enjoin acts or practices, and enter into a consent decree, as was the right to appeal an order of the Commission.

1990 Senate Sub. for Sub. for HB 3065 increased the size of the Kansas Public Disclosure Commission to nine members (two appointed by the Governor and one each by the President of the Senate, Speaker of the House, Minority Leader of the House, Minority Leader of the Senate, Chief Justice of the Supreme Court, Attorney General, and Secretary of State) and required the appointment of an executive director. The bill also added restrictions to those who could be appointed to the Commission and on their activities while serving; previously, there had been only the restrictions on running for state office, being a chairperson or treasurer for someone subject to the Act, or soliciting contributions subject to the Act, and serving on the Commission concurrently.

The bill also established the Kansas Select Commission on Ethical Conduct (KSCEC) and assigned the duties to:

- Study and review laws relating to all aspects of governmental ethics, including conflict of interest, public disclosure by public officers and employees, and campaign finance;
- Consider the need for additional laws pertaining to ethical standards for elective and appointed governmental offices and members of state boards and commissions established by law; and
- Study the preservation of the part-time citizen legislature.

The final report of the KSCEC from 1991 describes in detail the method of study including public hearings, comparison of Kansas to the “Model Law” from the Council on Governmental Ethics Laws, and review of a “significant number of articles” relating to its assigned topics. The KSCEC recommendations were reviewed by three subcommittees of the House Committee on Elections and included in 1991 HB 2454.

Kansas Commission on Governmental Standards and Conduct, 1991 – 1998

1991 HB 2454 amended many provisions in the Act, Ethics Law, and lobbying statutes. It renamed the Commission as the Kansas Commission on Governmental Standards and Conduct. Regarding the Commission itself, the major developments included additional eligibility requirements for Commission members, and the Commission became a fee-funded agency. The bill removed the requirement to apply to the District Court of Shawnee County for a subpoena and instead required the Commission to communicate, by a signed writing specifically stating alleged violations, with the person being investigated and allow them 30 days to respond. After reviewing information from the respondent, the Commission was authorized to issue a subpoena with a vote of at least 3/4 of Commission members.

Kansas Governmental Ethics Commission, 1998 – Present

1998 House Sub. for HB 2662 returned the name to the original Kansas Governmental Ethics Commission, required sponsor identification on certain campaign materials, and made other minor changes to the Act. **1998 SB 410** amended the Act and Ethics Law regarding subpoena powers, removing the 30-day notification previously required. Instead, the bill required the Commission to provide written findings of facts and conclusions of law to any person subpoenaed by the Commission in regard to an alleged violation of the Act or Ethics Law by that person.

2023 House Sub. for SB 208 amended the Act to apply the provisions of the Kansas Administrative Procedure Act, Kansas Code of Civil Procedure, and Kansas Judicial Review Act to actions by the Commission or Commission staff. The bill reinserted the Commission's previous requirement to apply to the Shawnee County District Court for an order to subpoena witnesses, and added a requirement to apply to the district court for an order for the Commission to administer oaths and affirmations, compel witness attendance, take evidence, and require the production of any documents or records that the Commission deems relevant or material to the investigation. The bill also changed the 3/4 vote by the Commission to a 2/3 affirmative vote to authorize such subpoena or subpoena *duces tecum*. The bill directs civil fines assessed by the Commission to the State General Fund instead of the Governmental Ethics Commission Fund, and it limits the amounts of civil penalties the Commission may impose.