

MINUTES

SPECIAL COMMITTEE ON ELECTIONS

October 16, 2012
Room 152-S—Statehouse

Members Present

Senator Terrie Huntington, Chairperson
Representative Scott Schwab, Vice-chairperson
Senator Pete Brungardt
Senator Oletha Faust-Goudeau
Senator Vicki Schmidt
Representative Randy Garber
Representative TerriLois Gregory
Representative Jim Howell
Representative Ann Mah
Representative Les Osterman
Representative John Rubin
Representative Kathy Wolfe-Moore

Member Absent

Senator Carolyn McGinn

Staff Present

Martha Dorsey, Kansas Legislative Research Department
Jill Shelley, Kansas Legislative Research Department
Mike Heim, Office of Revisor of Statutes
Renaee Jefferies, Office of Revisor of Statutes
Katherine McBride, Office of Revisor of Statutes
Ellen Martinez, Committee Assistant

Conferees

Representative Jim Howell
Kris Kobach, Kansas Secretary of State
Brad Bryant, State Election Director, Kansas Secretary of State
Michael Koss, League of Kansas Municipalities
Paul Degener, Shawnee County
Donna Shelite, Director of Motor Vehicles

Others Attending

Paje Resner, Hein Law Firm
Kent Cornish, Kansas Association of Broadcasters
Stuart Little, Little Government Relations

Dick Carter, The Carter Group
Sean Miller, Capitol Strategies
Robin Harris, Kansas Department of Revenue
Marcy Ralston, Kansas Department of Revenue

Morning Session

Senator Huntington, Committee Chairperson, called the meeting to order and welcomed everyone. This is the first meeting of the Special Committee on Elections since 1995. Senator Huntington called upon Secretary of State Kris Kobach to introduce his guests. Aleksandra Tomic from Bosnia and Soren Sonderstrup from Denmark have been assigned to observe elections in Kansas and Colorado from the Organization for Security and Cooperation in Europe's Office for Democratic Institutions and Human Rights. Their areas of interest are redistricting, voter rights, registration and identification of voters, campaign finance, alternative voting methods, the conduct of electoral campaigns and the media.

Ballot Language Statements

The issue assigned to the Special Committee by the Legislative Coordinating Council is to study the advisability of ballot language statements. Representative Jim Howell, Kansas House of Representatives, provided supporting testimony to explain the issue. Representative Howell introduced HB 2780 in the 2012 Legislative Session, and he testified before the Special Committee in support of forwarding similar legislation for the 2013 Session ([Attachment 1](#)). Earlier this year, Wichita had a special election on the Ambassador Hotel on the question of whether to agree with the city council's decision regarding an incentive offered by the city.

The question that appeared on the ballot read as follows:

Shall charter ordinance 216 entitled: "A charter ordinance amending and repealing section 1 of charter ordinance No. 213, of the city of Wichita, Kansas, which amended and repealed section 1 of charter ordinance No. 183 of the city of Wichita which amended and repealed section 1 of charter ordinance No. 174 of the city of Wichita, Kansas pertaining to the application of revenues from the transient guest tax" take effect? YES or NO

Representative Howell indicated some unsuspecting voters went into the voting booth, read the question for the first time, and then asked for assistance. When the poll worker informed the voter poll workers were not allowed to explain the question, the voter presumably guessed or abstained from voting on the question. Representative Howell testified this disenfranchises voters with unnecessary complexity. The permission granted under this bill would simply allow for election officials to create an official explanation for confusing ballot questions when they appear. This would be a general authority option given to an election commissioner allowing a process to develop and certify a simple, elementary plain-language explainer that could be posted on a website or be available to voters when they vote. It would not appear on the ballot itself; it would supplement the ballot question, whether sent in the mail or at the poll sites. He urged the Committee to sympathize with frustrated voters and implement a good solution. His testimony included examples of newspaper articles regarding ballot wording from Wichita and Hutchinson, Kansas.

Representative Howell stood for questions from the Committee. Questions and comments were offered on the following topics:

- The permissive nature of the bill, *i.e.*, whether municipalities should be authorized or required to provide explainers. As currently proposed, the policy from one municipality to another could vary widely. As drafted, HB 2780 would not protect a municipality from liability if the municipality does ***not*** choose to produce an explainer.
- If left permissive, what kinds of considerations an election officer should take into account to determine whether an explainer should be written, and whether and how an election officer would determine whether language is confusing to the voters.
- Whose responsibility it is to become informed on ballot questions.
- Whether ballot language explainers could be kept neutral.
- The time it took, and the stress involved, at the Sedgwick County Elections Office because of the ballot question read by Representative Powell (see above) and by other county officials where ballot language was confusing.

Martha Dorsey, Kansas Legislative Research Department (KLRD), presented an overview of information from other states' laws in the area of ballot explainers ([Attachment 2](#)). KLRD conducted a limited analysis of other states found to have authorized the use of ballot language explanations. Research found ten states have authorized the use of explainers for *local* ballot issues: California, Colorado, Connecticut, Iowa, Maryland, Nebraska, Nevada, Ohio, Oregon, and Utah. A different set of ten states—Florida, Georgia, Illinois, Maryland, Missouri, Montana, Nebraska, Ohio, Utah and Washington—were found to have authorized explainers for *statewide* ballot issues.

Ms. Dorsey summarized the various differences among the states and compared these differences to what Kansas law allows. For example, the *Kansas Constitution* sets forth home rule for cities while county home rule is addressed only in statute. Additionally, Article 14, Section 1 of the *Kansas Constitution* allows constitutional amendments be made only by the Legislature. A brief nontechnical statement expressing the intent or purpose of the proposition and the effect of a vote for and a vote against the proposition must be included. A brief question and answer period followed.

Kris Kobach, Kansas Secretary of State, testified as requested on voter turnout as it relates to ballot issues ([Attachment 3](#)). He added that he is in favor of legislation although there are many different ways to structure this type of law. He agreed there needs to be some protection for the state from lawsuits arising from this law. Time will be of the essence regarding ballot explainer development due to federal regulations regarding ballot deadlines.

The Secretary reviewed turnout numbers of general elections and primary elections from 1990 to the present. The National Voter Registration Act (NVRA), which was implemented in 1995, resulted in a greater number of people registered; however, this increase did not translate to a greater number of people who actually intended to vote. More directly related to the issue of ballot explainers, Secretary Kobach stated voter confusion generally does not result in a lower voter turnout – typically the voter already has made a decision about how to vote before (or,

sometimes, while) reading the ballot. The Secretary of State stood for questions from the Committee.

As questions progressed, the topic of the new photo voter identification (ID) bill arose. Secretary Kobach said of the roughly 400,000 votes cast statewide in the 2012 primary, 405 were provisional ballots cast due to the lack of required ID. He also was asked whether the votes or an advance ballot should be counted if the voter died after submitting the ballot, but before election day. He said that would require some study.

Michael Koss, League of Kansas Municipalities, testified in opposition to the idea of pursuing a bill on the topic of ballot explainers (Attachment 4). The League questions the extent of additional bureaucracy being offered to provide explainer language. In Mr. Koss' opinion, no law prohibits municipalities from adopting ballot explainer ordinances, so the League's recommendation is that any ballot explainer laws should be local. The League believes a more appropriate process would be for a municipality, rather than the Attorney General or Secretary of State to approve ballot explainer language prepared by the city, county, or district attorney. Mr. Koss said the League would offer to draft a model ordinance for Wichita.

Mike Heim, Office of the Revisor of Statutes, was asked to comment on the issue of whether municipalities already could provide ballot explainers. Mr. Heim stated the underlying 2012 bill, HB 2780, had been drafted using the broad definition of the term "municipalities" contained in KSA 75-6102, which includes not only cities and counties but other local government entities as well. Cities have constitutional home rule, which, the *Kansas Constitution* states, is to be liberally construed for the purpose of giving cities the largest measure of self government. Given that, he said, it is arguable that cities already have this power; however, it appears the City Attorney of Wichita disagrees. Mr. Heim continued by saying county home rule is governed by statute. The county home rule laws contain a number of limitations, including one that requires counties to be subject to all acts of the Legislature concerning elections. This limitation could prevent counties from having the authority to provide ballot explainers absent legislation specifically authorizing them.

Afternoon Session

Senator Huntington opened discussion on the issue. Representative Howell stated the explainer law would help the voter.

Paul Degener, Shawnee County resident, testified before the Committee. There was no written testimony. He questioned whether the State should be micromanaging this issue.

Senator Brungardt moved that the Special Committee request an opinion from the Attorney General to make clear the presence or lack of authority under current law to the various local units. Seconded by Representative Garber. After discussion as to whether to revise to the motion, the motion passed.

Brad Bryant, State Election Director, Kansas Secretary of State's Office, testified on ballot issue timing, stating voter turnout can be affected by timing, and turnout has an effect on the outcome. Another issue is cost; a locality can avoid most of the cost by putting a ballot issue on the ballot for an election in which office holders are decided. However, unless the election is only an issue election, ballot questions are always at the end of the ballot. Finally, elections that generate controversy can drive voter turnout. Mr. Bryant also expounded on Secretary of State Kobach's remarks that the Office supported HB 2780 and HB 2425 in the

2012 Session as an attempt to reduce voter confusion. The difficult part is who will write a statement that no one thinks is biased.

Senator Schmidt would like to include in the Committee Report an inquiry on what happens if a voter dies after casting an advanced voter ballot. She indicated a voter in her district cast a ballot by mail, but died before the election. Someone questioned whether that vote was counted in the totals. Senator Schmidt was told there is a difference in that, if an advance voter casts a ballot in person, the vote counts.

Senator Schmidt made a motion to include in the Final Report a recommendation to look into the situation and forward the factual information to the standing Senate and House elections committees for the 2013 Legislative Session. Seconded by Senator Brungardt.

After discussion, Senator Schmidt offered a substitute motion to include in the report that the Committee ask the appropriate standing committees to study whether votes count when the advance voter dies before election day. Seconded by Senator Brungardt. The motion was approved.

Chairperson Huntington asked Carol Williams, Kansas Governmental Ethics Commission (KGEC), whether there is a need to change any aspect of the candidacy filing deadline statutes. For example, does the law need to be strengthened regarding when a person filing for candidacy may begin to accept contributions? Director Williams testified that while most incumbents have a form on file, most new candidates are not knowledgeable regarding errors and omissions on filing forms. The biggest mistake they make is failing to file before they begin to take in money. The KGEC has always taken the position that new candidates do not know about the KGEC. The Commission tries to educate the candidates on these issues but does not have the resources to go after all those who make errors due to lack of information at the beginning of their candidacy. She said 39 percent of candidates received notices of errors and omissions this year.

Donna Shelite, Director, Division of Motor Vehicles, Department of Revenue, informed the Committee the Division has been capturing scans of birth certificates and passports (documents proving a person's identity) for new driver's licenses or identification. This was made mandatory for driver's license examiners in the fall of 2011. The Division is working closely with the Secretary of State's Office to develop a method to transfer voter-related information from the driver's licensing system to the Secretary of State's Office. The method has not yet been finalized, but they expect to be able to go live with the new, automated system in the spring of 2013. Representative Mah commented this means, currently, there is a two-step process and Ms. Shelite confirmed this. Representative Mah stated the National Voter Registration or "Motor Voter" Act also covered voter registration in social services offices, and she asked when this portion of the process would start. Mr. Bryant responded these offices are aware of the deadline and will do what is required when the law goes into effect.

Senator Huntington requested information on what happens when false information is published about a candidate in a campaign. Mr. Heim reviewed a memorandum on this issue and stated it is very difficult for a public official to win a defamation suit ([Attachment 5](#)).

Chairperson Huntington requested information regarding passed voter ID bills in other states. Ms. Dorsey reviewed court cases from Texas and Indiana, and she provided additional information as to how those states' laws compare to the Kansas law ([Attachment 6](#)).

Chairperson Huntington explained that two motions passed. Regarding the first motion, she asked Mr. Heim to draft a request asking the Attorney General for an opinion on the ability of municipalities to issue their own ballot explainers.

Chairperson Huntington thanked the Committee staff for their hard work getting ready for the meeting. The meeting was adjourned at 3:15 p.m.

Prepared by Ellen Martinez
Edited by Martha Dorsey and Jill Shelley

Approved by the Committee on:

December 19, 2012
(Date)