

MINUTES

SPECIAL COMMITTEE ON ETHICS, ELECTIONS, AND LOCAL GOVERNMENT

November 20, 2015
Room 346-S—Statehouse

Members Present

Senator Mitch Holmes, Chairperson
Representative Mark Kahrs, Vice-chairperson
Senator Oletha Faust-Goudeau
Senator Steve Fitzgerald
Representative Keith Esau
Representative Tom Sawyer
Representative John Whitmer

Staff Present

Martha Dorsey, Kansas Legislative Research Department
Edward Penner, Kansas Legislative Research Department
Jill Shelley, Kansas Legislative Research Department
Daniel Yoza, Office of Revisor of Statutes
Mike Heim, Office of Revisor of Statutes
Linda Herrick, Committee Assistant

Conferees

Greg Tice, USD 267
Jeff Meyer
Merlyn Spare
James Kenworthy
Mark Tallman, Kansas Association of School Boards
Ken Willard, Kansas State Board of Education
Kurt Fairchild
Randall Allen, Kansas Association of Counties
Cindy Green, League of Kansas Municipalities
Doug Mays
Scott Frank, Legislative Post Auditor
Eric Smith, League of Kansas Municipalities

Others Attending

[See attached list](#)

The meeting was called to order at 10:00 a.m. by Chairperson Mitch Holmes. He noted the Special Committee, consisting of members from both Chambers, is meeting to gain further knowledge about subjects, to provide consistent information to both the House and the Senate, to study current policies, and to make recommendations to the 2016 Legislature depending on the will of the Committee members. See the agenda ([Attachment 1](#)).

Local School Board Members; Conflict of Interest

Daniel Yoza, Office of Revisor of Statutes, gave an overview ([Attachment 2](#)) of 2015 HB2345 – Prohibiting school board members from having a conflict of interest. This bill was assigned to the House Education Committee and referred to the House Committee on Appropriations, after which the House Education Committee had an informational hearing. No further action was taken, but concern was expressed that the bill would eliminate a large number of members currently serving on local school boards due to the proposed conflict of interest provisions.

Current law includes three main legal restrictions on school board members in regard to conflicts of interest:

- May not be a teacher, superintendent, or principal in the district the board member serves or may not receive any compensation from the school district for work performed by the board member. This statute (KSA 72-8202b) does not specifically list teachers, but there is a Supreme Court case which states teachers may not serve on the school board in their district (*USD 501 v. Baker*);
- Must disclose all financial and business “substantial interests” defined as any business that works directly with or provides services to this state or the school board in the district in which the person resides (KSA 75-4301a); and
- Prohibited from making a contract with a person or business if the board member or the board member’s spouse has a substantial interest in the person or business (KSA 75-4304).

The second and third restrictions apply to all officials of local governments, or government subdivisions. The law defines a government subdivision as a city, county, township, school district, drainage district, or other governmental subdivision.

Mr. Yoza noted 2015 HB 2345 directly relates to and would interact with current conflict of interest law that is applicable to school boards.

Mr. Yoza continued, noting the key conflict of interest law applicable to all local government officials is KSA 75-4301a, which deals with substantial interest. The key issue is for a person to disclose any substantial interest. The disclosure requirements begin with a definition, and HB 2345 duplicates some of the language on substantial interest for school boards contained in current law.

Current law defines substantial interest as 5 percent ownership of a business or interest exceeding \$5,000; receiving compensation in the aggregate amount of \$2,000 a year; receiving goods or services without consideration having an aggregate value of \$500 or more; any

individual or spouse holding a position and receiving compensation; and an individual or spouse receiving compensation in the aggregate amount of \$2,000 or more in the preceding calendar year.

If a local government official or other official is required to disclose a substantial interest, a substantial interest form must be filed with the Governmental Ethics Commission once a year. When there is a change, a revised form should be filed. If a conflict was not disclosed and a related item was on the agenda for a board meeting, the conflict should be disclosed before acting on the matter, and it may be necessary for the official to leave the room during the discussion and action on the matter. The exception is if the price is fixed by law or if it is an open competitive bidding process.

One important word in the definitions is “business”. Business is defined by the Governmental Ethics Commission and does not include governmental entities. The statute prohibits a person in local government from making a contract with a person or business if the official has a substantial interest in the person or business. The person must abstain from action or leave the room. This bill would state a person could not hold the office of member of a school board if the person met any of the criteria for conflict of interest listed in the bill.

Senator Faust-Goudeau asked if the conflict could be the spouse’s and whether the spouse of a school district employee could run for school board. Mr. Yoza replied that, in the five definitions of “substantial interest,” the law states if the individual or that person’s spouse has substantial interest, it must be disclosed; and the bill would prohibit the spouse from running for or serving on a school board.

Representative Whitmer stated he represents many small towns and it would be difficult finding a board member who had none of these conflicts. He asked whether, if this bill were to pass, enactment would nullify the action of the people (voters) who put current board members in office. Mr. Yoza replied, yes, it would be in effect after the filing date. In response to a follow-up question, Mr. Yoza replied the bill would apply only to school board members and not to other local government officials.

Vice-chairperson Kahrs asked if under the *Baker* ruling, a district teacher could run for school board, but just would not receive compensation. Mr. Yoza stated the bill was on filling a vacated office, and the statute prohibits compensation to the same person as both school board member and teacher. In response to another question, Mr. Yoza replied the State Department of Education is not included in Section 1(c)(3)(C) of the bill, and that would need to be reworked to prohibit someone who resides in a home where that employee resides from running for or serving on a local board of education.

Vice-chairperson Kahrs noted he believes the bill is overly broad and unnecessary, and he would staunchly oppose this legislation. Chairperson Holmes reminded the Committee members that they are not hearing the bill, but using the bill as a springboard to gather information.

Duties and Responsibilities of Local School Board Members

Mr. Yoza then addressed the duties and responsibilities of local school board members ([Attachment 3](#)). The goal is to briefly talk about what school boards do and what might be considered a conflict of interest. From a legal perspective, school boards are mentioned in the

Kansas Constitution, but power is granted by the Legislature. The *Constitution* says the general supervision of public schools shall be provided by the State Board of Education, so local school districts should follow the rules and regulations of the State Board of Education.

Mr. Yoza stated KSA 2015 Supp. 72-8205 gives local boards the authority to transact all school district business and adopt policies that the board deems appropriate to perform its constitutional duty to maintain, develop, and operate local public schools. This does not relieve the local board from compliance with state law or create any responsibility on the part of the school district to assume the duties or responsibilities from other units of government. Local school boards may sue and be sued, execute contracts, hold real and personal property, and delegate to the superintendent of schools the power to purchase of goods and services under \$20,000.

The final section of Mr. Yoza's information gave examples of functions and programs of school boards, e.g., maintain, offer, and teach kindergarten and grades one through twelve, provide special education, hearing tests, dental inspection, and establish food service programs.

Survey of School Board Members Regarding Conflict of Interest

Martha Dorsey, Legislative Research Department, provided a summary of a survey ([Attachment 4](#)) on how many school board members would be disqualified under the provisions of the proposed 2015 HB 2345 if it were to be enacted.

The memorandum's second section lists the questions asked in the confidential survey to all school board members in Kansas. Ms. Dorsey stated this survey was disseminated with the help of the Kansas Department of Education (KSDE) and the Kansas Association of School Boards. All of the questions that would disqualify a school board member through a conflict of interest contained in the bill were added to the survey.

Ms. Dorsey noted these survey results should not be generalized to the entire possible 1,998 Kansas school board members. She explained staff does not know why those who did not respond did not do so.

A total of 1,136 or 56.9 percent responded from a possible total of 1,998 school board members. (All but one district have seven school board members; Leavenworth has three board members.) The top three "yes" responses to questions were:

- Spouse, sibling, or parent (does not include an adult child) employed by any Kansas school district – 339
- Member resides in a home where a school district or KSDE employee also resides – 173; and
- Member has a substantial interest in a business that works with or provides services to the State of Kansas or a member's own school district of residence – 122.

A total of 685 "yes" responses were received to the 6 items asked. This does not represent 685 separate respondents, as some reported more than 1 conflict.

The last page of the memorandum lists how many conflicts each board member (respondent) would have if this bill were to pass. Reporting at least 1 conflict were 465 individuals, and 186 of those reported multiple conflicts. Of the 1,136 responding, 671 reported no HB 2345 conflict.

Of those who answered “yes” to two or more questions, 84.4 percent said “yes” to two. Of 154 who answered “yes” to only 2 questions, 81.8 percent said “yes” to having a spouse, sibling, or parent employed by a school district or resided in a home where an employee of a school also resided.

When asked why a board member would not respond to the survey, Ms. Dorsey indicated there could be board members very strongly concerned who would respond, or very concerned they would be disqualified, so they would not respond, and staff really cannot determine why those board members did not.

Chairperson Holmes noted there was a good understanding of what would happen if HB 2345 were to pass. He stated he invited a number of school board members or former members to talk about their situations and their thought process when facing these issues. These really are not exclusive of school board members. All elected officials must determine whether they should abstain from a vote. It could be a clear conflict or it might look bad even though it is not a genuine conflict. The Chairperson asked the members to think of the situations for any elected official, including themselves.

Greg Tice, Member, USD 267 Local Board of Education

Mr. Tice presented information ([Attachment 5](#)) as President of the USD 267 School Board. This district includes schools in the cities of Colwich, St. Marks, Andale, and Garden Plain. He indicated the proposed bill would affect him personally because his wife is a middle school math teacher. He noted there are four other board members in this district who would be affected by the proposed conflict of interest legislation.

During his first term on the board, Mr. Tice noted, he intentionally did not serve on the Negotiations Committee representing the school board because he did not want any perception of a conflict with his wife’s position as a teacher. However, he then realized he is one of seven board members and cannot individually make a decision. The board is advised and directed by the school’s administration and so there is a measure of oversight that occurs. The board sets policy, but the administration is responsible for the implementation. In the past few years, raises of between 2 percent and 3 percent have been given to all staff in that district, amounting to \$37 per month to his wife. He added that health insurance has increased more than that.

The conferee added that if he did perceive he had a conflict of interest professionally, as an architect, school board members have the ability to recuse themselves. School board members are needed for their expertise—finance, IT, architecture, contracting, teaching, and other fields as well.

Mr. Tice pointed out that one of the foundations of this society is representative government and noted the importance of allowing individuals to represent their communities needs to be recognized and upheld, not infringed upon, and he feels this bill is not necessary.

In response to a question, Mr. Tice indicated he currently is a member of the Negotiating Team composed of two school board members, a superintendent, two principals, and four members representing teachers. Any decisions by the team still are brought back to the board for final approval. When asked if in this position he could be negotiating with a spouse on the other side, Mr. Tice replied only if she was an elected leader of the teacher's association. He feels greater study would be taken before he would run for such a position under this circumstance.

Representative Whitmer asked how many members were on his school board. Mr. Tice responded there were seven. Representative Whitmer stated five of the seven would have conflicts. Mr. Tice also indicated that he voted for a salary increase that was collectively in the best interest of the school district and all the staff.

Senator Faust-Goudeau stated she has seen colleagues, who have a direct relationship with a matter, make the decision not to vote. Mr. Tice noted he has not recused himself while on the school board, but has many times while serving the City of Colwich on its planning commission. In response to a question from Senator Faust Goudeau, legislative staff noted Kansas has approximately 70,000 school district employees, approximately 34,000 of them teachers.

Vice-chairperson Kahrs stated substantial legislation has been passed on spring election reform, with the anticipated policy goals of increased voter participation and more participation by candidates running for offices. He noted some areas of the state are pleading to persons to file for school boards and HB 2345 would have a negative impact. He asked Mr. Tice whether he disclosed his wife was a teacher during his campaign. Mr. Tice replied that his wife has been a teacher for 20 years, and more people know her than knew him. He added that he works in Wichita and lives in Colwich where his wife teaches. It was not a hidden fact that she was a teacher. No one was running for office, so he ran as a write-in. In the last election, there were four open positions and three were unopposed. Mr. Tice noted his school board is composed of one at-large position and a representative from each of the communities.

Jeff Meyer, Former Member, USD 349 Local Board of Education

Jeff Meyer next presented information ([Attachment 6](#)) explaining how intertwined small communities are. He was born and raised in Stafford where he attended and graduated from Stafford schools. His children attended the same schools. His employees' children attend Stafford schools. His son will be joining the business and will be sending his children to the same schools.

Mr. Meyer was appointed to fill a vacated position in year 2000 and continued to serve on the Stafford School Board for 11 years. As a contractor, he does routine electrical maintenance for the school and was doing so prior to serving on the board. A business in a small town is very rewarding and also challenging at times. Mr. Meyer stated he appreciated the comment that perception is reality and he tries very hard to keep conflict away that can be very detrimental to a business. He noted he was very careful about deciding to initially accept the school board position.

When jobs were bid, he would leave the room and return after action had been taken. That was recorded in the local paper. The school board position was very rewarding, and he would do it again.

The conferee noted he believes the conflict of interest bill is not necessary. Schools in most communities are one of the larger or largest employer, and to find someone that is not related would be very challenging.

Chairperson Holmes asked about the effect on Mr. Meyer's business of any report in the local newspaper about an apparent conflict of interest. Mr. Meyer replied that careful consideration was given before running for the school board position. The conferee added that he left a meeting when a project was being discussed, so he did not know how other board members voted.

Merlyn Spare, Former Member, USD 350 Local Board of Education

Mr. Merlyn Spare presented information ([Attachment 7](#)) concerning his 12 years on the USD 350 School Board. He was also an agriculture instructor for 32 years in USD 349. He added it is an honor to serve in an elected position because of the trust that constituents place on a person and the character, integrity, honest, and professional knowledge that a member brings to the table. This is important as a teacher and as an elected official.

As a teacher educator, Mr. Spare added that he served on many other boards in the community, has great knowledge in the classroom, had four children in the school, and felt he had much to offer, just as legislators have knowledge for the people of Kansas.

There was no monetary gain, no stipend, and no compensation, and personal dollars were spent on mileage coming to Topeka to serve on special education board.

The conferee stated if there was a discipline issue with the board member's children, or a matter involving a board member's spouse who was employed by the school district, the board member would leave the meeting while that subject was discussed. Abstention votes are "no" votes, but by removing oneself from the room, there is no vote and he added that legislators do the same.

Mr. Spare stated the candidate pool for school boards is small and enactment of HB 2345 would discourage people from serving. He noted school boards need parents to serve. He added it is good for districts in small towns to do business with local businesses. There are checks and balances for these matters considered by the school district boards.

Senator Fitzgerald asked whether a superintendent can be on the school board; Mr. Spare noted a superintendent cannot because the person is compensated for being the superintendent in that same district. Mr. Spare responded that teachers can be on the boards of any district in which they are not employed, and a superintendent's spouse can serve on the board, but there are more matters of which to be cognizant for possible conflicts of interest. Senator Fitzgerald questioned why the people above can serve on the board and but the superintendent or other employee cannot also be expected to exhibit integrity or avoid the appearance of conflict of interest.

Dr. Jim Kenworthy, Retired Superintendent, USD 350

Dr. Jim Kenworthy presented information ([Attachment 8](#)). Dr. Kenworthy is a retired superintendent who worked in the Manhattan-Ogden, St. John-Hudson, and Mill Creek Valley

districts. He noted that as superintendent, he attended about 100 regional education service center meetings. Once a month 40 to 45 superintendents would get together to discuss important issues happening in the schools. Topics included technology, internet, curriculum mandates, transportation, vocational and educational programs, and finance, but never was conflict of interest a topic. He added there is not a lot of difficulty in this area and, if there is, it is very isolated.

Dr. Kenworthy continued, saying board members will recuse themselves from voting or leave the meeting when there seems to be a conflict of interest. If they only abstain, it is considered a “no” vote under Kansas law. The Kansas Association of School Boards provides training for new board members. It is crucial to know when to recuse themselves. If they feel they have an issue, school boards can develop nepotism policies. Family members could be in supervisory positions of each other, and this policy provides procedure if this occurs. The wisdom and power of the whole seven-member board serve as checks and balances for possible conflict of interest situations.

Dr. Kenworthy added that concerning the question earlier about the superintendent and hiring of their spouse, the superintendent does not have a vote. The school board would make the decision about whether to hire that spouse. By the same note, superintendents could not serve as board members because they are being compensated in the district and state law would prevent them from serving on the same school district board by which they are employed.

Dr. Kenworthy added he appreciates the work of school board members, their service is vital, work is voluntary, and difficult positions are faced. The greatest challenge to maintain existing facilities and programs is the reduction in financial resources. School board members serve because they care about children, schools, and the state.

Dr. Kenworthy then answered questions. Chairperson Holmes asked about local nepotism policies. Dr. Kenworthy replied some are very strict and some are very open.

Chairperson Holmes noted all who testified have been from small schools and asked whether there would be a difference in a large school. Dr. Kenworthy replied there is the same local peer pressure to avoid any perception of conflict, giving the Manhattan school board as an example. Board members would recuse themselves, although they would not have to, but there could be a perception of a conflict.

Vice-chairperson Kahrs asked whether he advocates nepotism policies, and Dr. Kenworthy replied that he favors the least amount of policies and restrictions in order for the board to operate.

When asked why school districts create “at large” positions, Dr. Kenworthy feels it is the five-year position district boundary cycle and difficulty in recruiting members. He mentioned working with software from the Census to identify people in each household and possibly adjusting voting districts to have approximately the same number of people, and some Committee members indicated they would like to hear more about this.

Mark Tallman, Associate Executive Director for Advocacy, Kansas Association of School Boards (KASB)

Mark Tallman presented information ([Attachment 9](#)) from a board member training aspect. Mr. Tallman indicated 80 percent of newly elected school board members go through training. School board presidents and vice presidents attend training each year. Some districts ask KASB staff to go to their districts to provide training.

The conferee included the written document provided to boards when questions are received on whether a situation is a conflict of interest. Current law defines a substantial interest in a contract and states no local government officer or employee shall make or participate in the making of a contract where there is a conflict of interest. Other board members cannot force someone to not vote. The KASB legal staff is a resource for schools across the state, and KASB staff do not hear complaints that conflict of interest is a problem.

Mr. Tallman stated there is a difference between a legal requirement to declare a conflict and choosing not to vote because it is perceived to be a conflict. Statute requires an abstaining vote to count as a “no” vote. KASB’s advice is to leave the room, not voting because not present.

Mr. Tallman answered questions. Representative Whitmer noted there appeared to be the general consensus the bill is a fix looking for a problem. Mr. Tallman replied that he does not think there is an issue.

Senator Faust-Goudeau asked whether educators would be best for service on a board of education, noting the prior description by committee staff of the duties of a school board member. Mr. Tallman noted teachers are able to run and serve but Kansas law says one cannot serve on the board of the district where that person is employed. He noted one of the conferees stated the power of the local board is seven people from diverse backgrounds – education, business, local government, military, and others; with that diversity come better decisions and diverse opinions and they are elected by the people. He has no concern about having educators serve on the board.

Chairperson Holmes noted that, in asking Revisors to give duties and responsibilities and current law, he was astounded at the number of statutes existing and the training needed. He asked whether it is challenging for school board members to keep up with the law. Mr. Tallman replied that workshops for new board members are one day long and only once in 25 years has a board member resigned after the training. Many board members say they came to KASB training and three or four years later come back and only then can they understand and ask questions. The education and policies are out there, as for those serving as legislators or on local governments. The responsibility is to know where to go if they have questions. Much time is spent on open meetings and open records to legally comply as a local board member.

Ken Willard, Member, Kansas State Board of Education

Ken Willard provided information ([Attachment 10](#)). The conferee stated he served on a local school board for 5 or 6 years before serving almost 14 years on the State Board of Education. He noted this proposed bill would work toward preventing good people from serving on school boards. Mr. Willard added that this bill would prohibit hiring of relatives statewide and, if he had a brother driving a school bus in a school district 200 miles away, he could not serve

on his local school board. He has not been aware of conflict of interest being a problem on the or state school board. In many areas, it is very difficult to find people qualified to serve. This bill would make that problem even worse.

Mr. Willard indicated he had spoken with two superintendents, and one indicated this bill would eliminate five of that district's board members and another noted it would eliminate six, which would create a big problem. It would remove four of the current state board members because of a spouse conflict. The conferee added that all school board members he knows are very conscientious of any appearance of a conflict and try to avoid as much as possible.

Mr. Willard stated public education is the largest employer in the State of Kansas and eliminating all the people connected to those employees, in local school districts as parents, spouses, or siblings, a majority of the people in the state would not be able to serve on a school board. So for this reason and reasons given by others who testified, he encouraged the Committee to not report favorably on this bill.

Mr. Willard answered questions. Senator Fitzgerald noted Mr. Willard said he does not know of many school boards that have a strict conflict of interest policy, but thinks that all districts should. Mr. Willard said he cannot speak for what every school district has, but each certainly should have a policy just as a matter of integrity.

Senator Fitzgerald stated he believes conflict of interest exists, whereas the law either recognizes or does not recognize it. He stated testimony indicates conflicts do exist to some degree in perception and it is up to the members to recuse themselves from voting. The question is what the law should be, not what the law is. He noted much testimony has been about what the law is, and whether it is applied and adhered to. He suggested state laws should encompass all districts and go a little into what those district conflict policies are. He requested information on policies in place, so they could be considered.

Mr. Willard replied it is appropriate for the Legislature to determine whether stricter laws should be passed. However, HB 2345 would be so far-reaching and would cause more problems than it is intended to solve.

Senator Faust-Goudeau stated she believes educators and teachers making these decisions, having that knowledge, serves the state well, and it seems there has not been a major uproar on this issue.

Afternoon Session

The Committee was reconvened at 1:40 p.m. following a lunch recess.

Number of Local Governments from 2012 Data - U.S. Census

Martha Dorsey provided census information, 2012 data on total local governments per 100,000 people ([Attachment 11](#)). She stated last year, KLRD acquired some 2012 U.S. Census Bureau information complete for 48 states. (Connecticut and Rhode Island for some reason did not have their data recorded in this information.) Kansas ranks fourth among the 48 states in the total number of local governments per 100,000 people, with 142 per 100,000 people.

The U.S. Census provides figures for general purpose governments (county and sub-county governments which are municipal or township governments). Kansas ranked third in this area per 100,000 people.

Special purpose governments include special districts and school districts. Kansas ranks seventh in the 48 states for which data was available in terms of special purpose governments per 100,000 people, with 68.

Kansas has high rankings with respect to units of local government. On the very last page is local government revenue and debt for 2012. For the nation, as well as Kansas, property taxes are a primary source of revenue for all government types.

Chairperson Holmes asked whether the number 142 on the first page was the number of governmental entities or number of elected officials per 100,000. Ms. Dorsey noted that represents governmental units.

Kurt Fairchild, Member, Stafford County Commissioners Board

Kurt Fairchild provided information on townships ([Attachment 12](#)). The conferee is a county commissioner in Stafford County and a former township board member. He relayed information about an incident involving transferring authority for some land from the city to the county. The members of the three-member county commission board with conflicts stepped down and alternates attended, voted, and resigned, and Mr. Fairchild noted that conflict was recognized and handled correctly.

In Stafford County, there 21 township units in a county of only 4,300 people with three small towns and three very, very small towns. Some township units have 400 people, and 1 is as small as 7 people; the latter needs 3 township board members. According to the county clerk, during the past several township elections, only five or six people actually file for the position of township board member. When asked if there has ever been a vacancy, the clerk noted they have always been filled with a write-in.

The conferee stated in the past three years as county commissioner, six township board members resigned, and many times, it takes seven or eight months to find someone willing to assume that duty.

Mr. Fairchild explained the complications of trying to change the township system in his county. Several people, along with his father, worked very hard campaigning for a county system. In 1993, the issue was soundly defeated by a vote of 1,031 to 313. That issue caused many hard feelings amongst lifelong friends. He stated legislators also know the challenge of changing things that are popular, mainly because they have always been done in a certain way. He added he cautioned anyone who doesn't believe that local control isn't a dear to the heart issue to many people in rural areas.

Mr. Fairchild noted that most townships consist of an area 6 by 6 square miles, and it is not a very efficient use of money to spend \$250,000 for a road grader for dragging 50 miles of road. In Stafford County, there are 21 townships with a grader in each township, and the county owns 3 road graders. He added that 10 to 12 graders would do a sufficient job of dragging roads in his county. Another problem for many of the townships is in a small populated area, a road

grader is not a full time job and not paying a large wage, so it is a struggle to find people willing to run a road grader.

He stated KSA 80-1101 provides that if a township has a population of fewer than 200 residents, the commissioners may determine to disorganize the township and attach its territory to an adjoining township. There is a procedure for a protest petition. [*Staff note:* KSA 80-1101 and KSA 80-1106 (noted in written testimony) were repealed in 2008. KSA 2015 Supp. 80-1117 and 80-1118, added in 2008, allow county commissioners to disorganize townships under certain circumstances, including when a township has fewer than 200 people.]

Some townships turn over road maintenance to the county, under statute. The length of time for the agreement must be stated, the agreement must be submitted to voters of the township for approval, and the township board may later reverse its decision subject to a vote of the voters of the township. The township turns over its road money and equipment to the county, and the county can levy taxes in the township for cost of township road maintenance. The most popular and widely used system in Kansas, upon dissolution of the township, is the county road system. The county is then responsible for all roads in the county. KSA 68-515b provides that a county may adopt a county road system in several ways.

Senator Faust-Goudeau asked whether, when townships turn over maintenance to counties, the funding goes as well. Mr. Fairchild indicated the funding goes along only if they go to a county road system.

Mr. Fairchild noted much of meeting time for county commissioners who have a county unit road system is spent listening to complaints from constituents about road issues, such as which roads get graded first. He added that school bus routes and mail routes receive priority.

Representative Sawyer asked whether the reason township voters are reluctant to turn over to county unit road systems is that township people are afraid their roads would be neglected. With a six-mile square area, they know their roads will get attention. Mr. Fairchild replied in his opinion, people who live in towns can vote and they do not want to pay for rural road maintenance. The rural township areas would support it.

Historical Information - Randall Allen, Executive Director, Kansas Association of Counties

Randall Allen presented historical information on counties ([Attachment 13](#)). Some counties preceded statehood; those 32 counties are indicated in the striped section of the first map. The *Kansas Constitution* contains a provision requiring a county have at least 432 square miles. Wyandotte County does not have 432 square miles, but is allowed to continue on because it was established pre-statehood. All counties created after 1861 had to meet the area requirement. Butler County is the largest county having an area of 1,431 square miles. The biggest factor in determining the size of counties is that it allowed a person to travel by horseback from home to the county seat, transact business, and go back home in one day.

In the western part of North Dakota, South Dakota, Nebraska, Kansas, Oklahoma and Texas, counties are usually larger in area than in the eastern part of each state. Kansas has 105 counties, Missouri has 115, Oklahoma has 77, Nebraska has 93 and Colorado has 64. Texas has 254 counties, the most of any state. There are 3,068 county governments in the United

States. Counties tend to be larger west of Kansas. Kansas is not atypical in size of counties in the Great Plains and east to the Atlantic coast.

The Chairperson asked the conferee to address the size of county commissions. Mr. Allen indicated the size of the commissions is slowly changing. The law requires counties to have boards of commissioners of either three, five or seven members. At one time, all 105 counties had three members. Now, twelve counties have five-member boards.

Greeley County, at the state's western border, is one of the two consolidated city-counties in the state. It has a five-member board called the Board of Supervisors, which reflects the nomenclature of some other states, *i.e.*, Iowa, California. On the eastern border, the Unified Government of Wyandotte County has 10 commissioners plus the mayor/CEO, or a total of 11. Johnson County was created under a charter and has 7 members. A county can change the size of its board of county commissioners by an election of the voters. Over the last several years, there has been a gradual increase in the sizes of the boards of county commissioners, not necessarily relative to population. Hodgeman, Greeley and Hamilton Counties have small populations and have gone to larger commissions.

Twenty counties of the 105 now have either an appointed professional county administrator or county manager. Those 20 counties have a combined population of 1.9 million, representing 68 percent of the population of Kansas.

A number of other counties have a county coordinator, director of administrative services, or some other title that does not have the standing of county administrator but works with the county commissioners to deliver public services.

There are three different road systems that are described in statute, and a fourth system that is used in some counties that is lawful, but not described in significant detail in statute.

The first is referred to as the non-county unit road system, also known as the county-township system, operates in 35 counties. Mr. Fairchild, an earlier conferee, addressed this system. The second system, the county unit road system, in which the townships have no road maintenance responsibilities is more common, being used in 67 counties. Urban residents pay taxes to maintain all local roads (township and county). The conferee stated in regard to Representative Sawyer's point, it is a deterrent for some urban residents to pay for maintenance on roads they will rarely ever drive upon.

The third system authorized by statute, known as the hybrid system, is in place in Clay, Pottawatomie, and Leavenworth Counties. It is similar to the county unit road system. The county maintains all public roads outside of cities, and the townships do not have any road maintenance responsibilities. The city residents do not pay taxes for those former township roads. Rather, the county keeps a separate set of accounts for all monies spent on rural roads. This system allows oversight and management by the counties and provides a greater economy of scale than the township system.

The fourth system is not listed. Under the Interlocal Cooperation Act that the Legislature passed in the 1970s, broad authority is given for cities, counties and townships to contract with each other to do what they otherwise were authorized to perform, *i.e.*, road grading, weed control, and snow removal, possibly for a limited trial period of time. It allows the township board to continue to exist and approve the contract with the board of commissioners of that county to conduct the work.

Mr. Allen indicated counties and townships have a long history of working together. The number of townships in the state is approximately 1,200. Last year, 1,176 townships filed budgets with the division of accounts and reports. That means they either had intention to spend money, to levy taxes, or do both.

Mr. Allen noted a few years ago, the Legislature, through local government committees, changed a statute, pertaining to changes in county boundaries. If starting over today, Kansas would not likely have 105 counties. Through KSA 18-202, the public can petition for an election on changes in county boundaries. It requires a vote in each county would be consolidated and requires a majority approval. To his knowledge, this statute has never been used, that is, there has never been a ballot question.

Representative Sawyer asked if any counties have completely eliminated the townships. Mr. Allen noted some counties have. Grant County has one city, one county, and no townships and they all vote in the same place, Ulysses.

The last county converted to a county unit road system was in 1979 in Coffey County. There was a lot of construction in Coffey County at that time with the building of Wolf Creek Nuclear Power Plant. The last time a county commission put the issue on the ballot and had a protest petition was in 2010 in Osage County. It was defeated overwhelmingly.

Representative Sawyer stated in most rural counties once the road responsibility is removed, there is not much left for them to do. Mr. Allen stated there still would be fire suppression, cemeteries, and noxious weed control. Representative Sawyer noted some in Sedgwick have libraries and added he thought this county has 35 townships. Mr. Allen noted some counties have 30.

Chairperson Holmes asked if all the townships are the same area size. Mr. Allen, replied no, but as mentioned by Commissioner Fairchild, typical townships are six miles by six mile. Some have been consolidated and have unusual shapes. It was further asked if the consolidation of townships are contiguous, and Mr. Allen was going to check.

Senator Faust-Goudeau questioned why the number of county commissioners would either be three, five or seven and asked if the odd number is required by statute. Mr. Allen noted the general law requires commission size. The reason Wyandotte is larger is because it was organized under a charter. Mr. Allen noted KSA 18-202 provides the local process to change/consolidate county boundaries, but does not give authorization to the legislature to make the change.

Historical Information - Cindy Green, Deputy Director, League of Kansas Municipalities

Cindy Green provided history on local governments ([Attachment 14](#)). Just as counties existed before the State, so did city governments. There were 15 city governments prior to statehood. In 1854, the Kansas-Nebraska Act was passed by Congress which allowed Kansas to become a territory and gave power to the governor and the legislative assembly.

There have been a few new cities added in the last couple of decades. The last two were the City of Parkerfield in Cowley County in 2004 and Linn Valley in Linn County in 1998. Two cities unincorporated, the most recent being Treece in Cherokee County. The City of Harris,

voted nine to two to dissolve their city in 2001. Some towns were first settled for mining and railroads, but once projects were done, a town became a ghost town.

City government was established and still exists because of water, waste water, solid waste, fire, police and emergency services. Health department issues (prevention of disease, etc.) moved to the county.

- First class cities have a population of 15,000 or more. Once a city reaches 25,000 people, it must become a first class city. Cities move up as they grow
- Second class cities have a population of 2,000 but less than 15,000. When a city reaches 5,000 people, it must become second class.
- Cities of the third class have a population under 2,000. To incorporate as a new city in Kansas, there must exist 250 residents or 250 platted lots served by water and sewer lines.

Kansas has 25 in first class; 98 in the second; 503 in the third. About 82 percent of the population resides in incorporated cities. There are 107 cities with a population under 100.

Ms. Green continued noting there are 103 county governments and two unified counties. There are 626 cities, 1,268 townships, 306 school districts (including community colleges and universities), and 1,523 special districts, which could include city-county airports, cemetery, water and drainage districts.

The U.S. Census Bureau indicates a drop of about 4,000 governmental districts from 1942 to 1952. In the 1960s, there was major consolidation of school districts. From 1942 to 2012, the number of Kansas cities increased from 589 to 626. Based on the U.S. Census data from 2012, Kansas ranked 6th among states in the number of local governments, with 3,826 including special districts.

In response to a question, Ms. Green indicated the number of cities jumped from 1942 to 1952, 589 to 605, but stayed fairly consistent after that time.

Review of Past Legislative Study - Doug Mays, Former Speaker of the House of Representatives

Doug Mays provided information ([Attachment 15](#)) on a study conducted by the Legislature in 1993. The study concerned state mandates on local governments and the duties and functions of special district governments.

Mr. Mays indicated everything he heard today, he heard back then. At time, the League of Kansas Municipalities gave a lot of data, and Kansas was ranked first in the country in number of local governments, defined as a government that has elected officials that levy taxes.

After two days of study, there was a feeling of too much government in Kansas, the conferee noted. If you looked at the top ten to fifteen states in total government, over half are populous states. Kansas ranks fourth now. The finding that emerged in the interim committee 22 years ago, was that we had an enormous amount of townships. There was a lot of talk about

consolidating counties, eliminating townships but this ground to halt. Once the press talked about this, it was found people like their government close to people; they practice that, and they like to vote. People who vote want to keep their vote, the conferee observed.

There are about 1,400 townships in Kansas, or one third of the local governments. The average population of townships is around 250. On square mile basis, that represents seven to ten people or two to three families; the conferee observed not that many people live in rural areas and often, farmers retire and move to town.

Mr. Mays added he believes in government close to the people. If it is not working because you cannot get people to run, there have to be other solutions. Maybe the county commission can take over the city or force the unincorporation. Nothing has changed since 1993. The concern is the same, the statistics are the same, and the solutions are the same, Mr. Mays noted.

Chairperson Holmes asked what would be a good solution for dissolution, referring to a town that has no government because nobody ran for office. If nobody runs, should it be dissolved. The conferee suggested possibly the county commission can appoint someone. People are not as civilly active as they once were. The elected office does not carry the glamor and prestige it once did.

Senator Faust-Goudeau asked whether, if elections were changed to non-partisan, things would move smoothly. Mr. Mays noted the townships make their choices not the Legislature, and this might increase the number of people who run for office.

Senator Fitzgerald commented, in another committee, he heard when cities become partisan and boards become partisan, that anyone working for the government becomes excluded. This is an example of how having partisan elections eliminates a lot of people.

Legislative Post Audit Report - Scott Frank, Legislative Post Auditor

Scott Frank reviewed a 2003 Post Audit report on local government ([Attachment 16](#)) and noted their office never conducted a followup on the information in this report. Nevertheless, Mr. Frank commented, it is good information for the purpose of discussion.

Some of the findings were:

- The census data counts townships if they have their own taxing authority.
- The first question of the audit was whether money could be saved through reorganization and improved cooperation and the auditors found that realistically there will not be a lot of city and county mergers. There were four in the entire country since 1990.
- There was a list of efficiencies that could be considered if departments were combined or resources were shared.

- Local officials pointed out laws that got in the way of consolidation. The statute on fire departments and the fire fighters' relief fund provided smaller relief fund following consolidation.
- Laws required the county treasurer and county clerk to keep duplicates of county warrants, and required each county to have a clerk, treasurer, and register of deeds.
- For townships and special districts, most of the money is for direct services, not a lot of overhead, and one would be spending money for services to continue to provide them.
- People are more willing to volunteer in townships than in cities and counties.
- When local units levy taxes, there are inequalities in tax levies, *i.e.*, different taxes in different townships.
- There was concern about getting rid of townships and special districts because of losing control of services, and deterioration of services. The history of the community is lost if absorbed into the county or city.

Chairperson Holmes asked if Post Audit staff could do a study today asking the same questions. Mr. Frank indicated a Committee or a legislator must request such a study.

Lack of Governing Body for the City of Frederick - Eric Smith, League of Kansas Municipalities

Eric Smith, League of Kansas Municipalities (LKM) provided information ([Attachment 17](#)) in the absence of its General Counsel, Larry Baer. He indicated there is a city in Rice County – City of Frederick – that has no government, and no action can be taken.

Mr. Baer's paper gave information on how this is handled across the United States. Mr. Smith noted that essentially, there are three types of dissolutions of a city in different states:

- One is being passive dissolution, a signal that the city is going to dissolve;
- The second is involuntary dissolution, which is rare and we believe under State of Kansas the way city is organized and created would not be permitted; and
- There is voluntary dissolution which Kansas has, that allows cities or officials to move forward with the dissolution.

Under current Kansas law, there are two statutes the state has on dissolution, one is KSA 15-111 and KSA 15-111a. The latter is a special statute passed concerning the City of Treece that took place in year 2012.

KSA 15-111 is the current law. Essentially a city of the third class, with a population less than 5,000, can have a petition signed by a majority of the voters to dissolve the city, file with county clerk, and place the question on the ballot at the next election, either primary or general election. It takes a two thirds majority to dissolve the city. Absent that vote, the city continues.

Mr. Smith noted that LKM became aware of the City of Frederick situation last summer when a reporter called asking questions. Since then, LKM has reached out to try to communicate with the last city clerk and is trying to gather and communicate with the residents to see what can be done to help. Under current statute, the city government continues with the last people elected to the council, assuming they still live in the town. From a legal standpoint, there may still be a government there, but the question is whether it is functioning. For Frederick, it is clearly not functioning and would require activity from the citizens to make something happen. LKM representatives will talk with the city clerk after the election per their request.

Representative Sawyer asked if they have a budget and taxes levied and if there is a city treasurer or clerk. Mr. Smith noted he does not know how the city is functioning, but there was no budget filed. The county clerk indicated this situation with the town just happened. It is assumed they had a budget last year, but could not pass the 2016 budget. Mr. Smith indicated LKM has started to communicate with some of the city residents, but nothing has happened.

Representative Whitmer asked whether this is similar to Peck Improvement District. Mr. Smith noted it is somewhat similar in that KSA 15-101 says a city council member serves for their term or until their replacement is sworn in. The city government body still technically has members if they are living in the jurisdiction. Representative Whitmer questioned whether a neighboring community would want to annex it.

Senator Fitzgerald stated that, as he understands, Kansas law has a purely voluntary dissolution process. Mr. Smith replied this is correct, and it will depend on the citizens of the city. He added the city is not funded, and the LKM is unsure what services the city provides.

In response to whether LKM has recommendations for the Legislature, Mr. Smith discussed this with the LKM director this morning, and we believe this is rare. Our thoughts were that if this is something that the Legislature wants to explore, LKM would work with you to consider possible ways to create a backstop, and if the current structure does not work, there may be some trigger point at which passive dissolution becomes appropriate. There are some communities with the same population and the towns run fine.

Vice-chairperson Kahrs asked if the League would look at other states to see what they have short of voluntary dissolution. Mr. Smith noted they could follow up with that. He added that LKM will do everything it can to cooperate and provide the information and hopefully the solution.

Representative Sawyer added that this is rare, but may not be in the future with 107 cities with a population under 100. In the next decade, we could see a lot of cities having this problem. If a few key people move or die, cities may not be vibrant anymore, and this may need to be addressed.

Committee Comments and Recommendations

After a short recess, Chairperson Holmes noted the time has come for the committee to make recommendations to the legislature. Some members might have recommendations from the last meeting in October and members were provided a copy of a summary of considerations ([Attachment 18](#)).

Ms. Dorsey reviewed the summary document. The first recommendation would be to increase aggregate campaign contribution limits. There is currently a bill before the Legislature, 2015 HB 2213, and in most cases, the limits are doubled. In a couple of cases, it was more than doubled. The suggested Committee recommendation is to double all the limits. In the first table, state senator or member of the state board of education; and any county officer whose district population exceeds 75,000, 2015 HB 2213 increased the current limit of \$1,000 and \$500 respectively to \$2,500 for each. Other than that, every other recommendation reflects a doubled increase. The other Committee option was to remove all campaign contribution limits.

Ms. Dorsey continued that during the October 6 meeting, the National Council of State Legislatures (NCSL) representative discussed history and information from other states. Committee members were referred to October meeting documents.

On page two of the summary, the next issue addressed was transferability of campaign fund balances. In October, Eddie Penner, KLRD, gave a presentation on that topic. He discussed the history, analyzed three of the the more recent bills on this topic, and compared what other states are doing in his memorandum. The suggestion was to adopt the bill, 2015 HB 2215.

The second recommendation outlined would allow a candidate to transfer balances either up or down to a different elected office whether it has a higher or lower campaign contribution limit and define transfers as contributions only for amounts received in the current election cycle. The example was given of a candidate had run for Governor and then changed his or her mind and decided to run for the House, those contributions received in the current election cycle would be subject to the limits, and any excess would have to be returned to the contributors. Ms. Dorsey noted that concludes the list of suggested recommendations.

Chairperson Holmes recognized Vice-chairperson Kahrs to explain the thought process behind these alternative actions. Vice-chairperson Kahrs stated at the last interim committee, we had a fairly extensive presentation by Ms. Owens-Hubler from NCSL and reviewed what other states were doing. It was noted Kansas has not amended the contribution limits for quite some time. If you consider inflation, the Vice-chairperson stated, our contribution limits are underwater, so to speak.

Vice-chairperson Kahrs noted HB 2213 passed out of the committee overwhelmingly, was supported by bipartisan support in the committee and was supported by the Chairman of the Republican party and Chairwoman of the Democratic party for a number of reasons. He added that he does not believe new candidates and incumbents have the resources to wage their campaign in a level playing field with the current limits. The Vice-chairperson added that the other alternative to doubling the limits, would be to remove limits entirely. There a lot of states that have done that, including Missouri. He stated he is not opposed to that, but he is also realistic and pragmatic.

Vice-chairperson Kahrs moved that the Special Committee recommend to both the House and the Senate that effective in 2017, campaign contribution limits be increased as embodied in 2015 HB 2213, and as stated in recommendation 1.a. of the attachment. Representative Sawyer seconded the motion, and the motion carried.

Ms. Dorsey added that the recommendation by Vice-chairperson Kahrs is nearly the same as what passed out of the House Committee. The only change from those recommended by 2015 HB 2213 is to change the effective date from 2016 to 2017.

Vice-chairperson Kahrs noted that, to clarify, the amount listed for State Senate and State Board of Education, and any county officer whose district population exceeds 75,000, actually goes from \$1,000 to \$2,500 and from \$500 to \$2,500 respectively, consistent with 2015 proposed HB 2213. All other changes in contribution limits are doubling. Vice-chairperson Kahrs explained the Senate limit is capped at \$1,000 per election cycle, so although most limits are being doubled, the Senate is increasing one-and-one-half times.

Senator Holmes asked for any other recommendations by Committee members from the Special Committee meetings this fall.

Vice-chairperson Kahrs summarized the issue of allowing transferability of campaign fund balances after all debt has been retired (page two). There was discussion on this at the October 6th Committee meeting, the House Committee on Elections passed 2015 HB 2215 out of committee. This bill would change the law back to as it was prior to the Supreme Court ruling, and basically allows funds can follow the candidate to any other elected state office. The effective date would be changed from 2016 to 2017, and that is the only change to 2015 HB 2215.

Senator Fitzgerald stated that in running for the Senate, he could receive \$2,500 in the primary and \$2,500 in the general from a contributor, and then take that money and use it for another campaign for which it was not directed. The Senator stated he was not sure that was good policy, regardless of the amount. On general principles, he stated he would be opposed to this change.

Vice-chairperson Kahrs repeated the purpose of the bill, and that currently candidates cannot transfer their contribution funds from one campaign to another. They could return those contributions. HB 2215, the Vice-chairperson continued, would allow the contributions to follow the candidate for any other state office effective in 2017. He noted this was policy until 2003, so for most of the Kansas Statehood, this has been the policy.

Vice-chairperson Kahrs moved to recommend the adoption of 2015 HB 2215, which would allow a candidate to transfer fund balances from the candidate's original campaign account, effective in 2017. Representative Whitmer seconded the motion. The motion passed with Senator Fitzgerald recorded as a nay vote.

Chairperson Holmes asked if there were any other recommendations by Committee members.

On the subject of conflict of interest, for which testimony was provided today, Chairperson Holmes presented three alternative recommendations:

- Take legislative action to define a bright line that applies to all elected officials, not just school board members;
- Request the State Board of Education to gather the best practices from local districts and apply them statewide; or
- Make no recommendation at all.

The Chairperson asked for discussion by Committee members.

Senator Faust-Goudeau asked the Chairperson to elaborate on the second recommendation. The Chairperson commented his thought was to have a resolution asking the State Board of Education to review the issue and see if there is a need for a consistent statewide policy. Senator Faust-Goudeau noted that from today's testimony, it seemed the conferees were indicating they already have procedures to follow. After giving this further consideration, Chairperson Holmes noted that since the Committee was just hearing the information today, that a recommendation not be made at this time.

Vice-chairperson Kahrs made a motion to not make a recommendation on the conflict of interest, seconded by Representative Whitmer. The motion carried.

Adjournment

There being no other business, Chairperson Holmes thanked the members of the Special Committee. The meeting adjourned at 4:10 p.m.

Prepared by Linda Herrick
Edited by Martha Dorsey and Jill Shelley

Approved by the Committee on:

October 21, 2016

(Date)