

GOVERNMENTAL ETHICS COMMISSION

2020 ANNUAL REPORT

901 S. Kansas Ave
Topeka, Kansas 66612
(785) 296-4219
<https://ethics.kansas.gov>

PREFACE

This annual report is submitted to the Governor and the Legislative Coordinating Council for transmittal to the Legislature pursuant to K.S.A. 25-4119a and K.S.A. 46-1212c. With some exceptions, the report covers Fiscal Year 2020, the period from July 1, 2019 through June 30, 2020. Occasionally, data for the first quarter of Fiscal Year 2021 is used to provide a more complete picture of the Commission's operations.

Table of Contents

Mission	1
Agency Philosophy.....	1
Commission Members	2
Staff.....	2
Budget.....	4
Legislative Activity.....	5
Organization and Operation.....	5
A. Education and Public Awareness.....	5
B. Advisory Opinions.....	6
C. Review and Audit Program.....	7
1. Campaign Finance.....	7
2. Conflict of Interests.....	9
3. Representation Case Disclosure.....	10
4. Lobbying.....	10
D. Enforcement Programs.....	11
1. Inquiries and Investigations.....	11
2. Complaints.....	11
3. Civil Penalties and Fines.....	11
Commission Recommendations.....	13
Appendix I - Summary of Advisory Opinions Issued in FY 2020.....	16
Appendix II - Comparison of Lobbying Expenditures 2010-2020.....	18

Mission:

The Governmental Ethics Commission works to foster public trust and confidence in state government decision-making through education, administration, and enforcement of the Campaign Finance Act and State Governmental Ethics Laws.

The Kansas Governmental Ethics Commission was established by the Kansas Legislature in 1974 to administer, interpret, and enforce the Campaign Finance Act (K.S.A. 25-4142 *et seq.*) and laws relating to conflict of interests, financial disclosure, and the regulation of lobbying (K.S.A. 46-215 *et seq.*). These laws establish the public's right to information about the financial affairs of Kansas' public officials, lobbyists, and candidates for state and local office. The Commission also renders advisory opinions and can adopt rules and regulations under a less comprehensive conflict of interest law covering local government officials and employees (K.S.A. 75-4301 *et seq.*).

Agency Philosophy:

The Kansas Governmental Ethics Commission believes the strongest safeguard against unethical conduct by public officials and employees is an informed and active public. For the disclosure elements of the legislation to have meaning, the public must be made aware of the legislation and the financial disclosure information must be accessible to the public. To this end, the Commission and its staff will approach their duties with a dedicated sense of purpose and responsibility to the individuals subject to the Campaign Finance Act and State Governmental Ethics Laws and the citizens of Kansas by performing their activities in an efficient and impartial manner. The Commission places a high priority on providing assistance to those subject to the Commission's jurisdiction in order to prevent violations.

Commission Members

The Kansas Governmental Ethics Commission is a nine member, bipartisan, citizen commission authorized by K.S.A. 25-4119a. Members serve two-year terms with the Commission's Chairperson appointed by the Governor. The Vice-Chairperson is elected by the membership. Commission appointments are made by the Governor, Attorney General, Secretary of State, Chief Justice of the Supreme Court, President of the Senate, Minority Leader of the Senate, Speaker of the House of Representatives, and the Minority Leader in the House. The Governor makes two appointments, each from a different political party.

The Commission usually meets once a month. The Commission's meetings are open to the public and information prepared by the staff for each meeting is available to the public. During FY 2020, the Commission held 7 meetings. This number is drastically reduced due to the COVID-19 pandemic. Meetings are scheduled to address a variety of matters including the review of and action on complaints filed, investigations undertaken, and audits performed. In addition, the Commission issues advisory opinions to answer questions involving interpretation of a particular section of the law, makes policy decisions, amends and adopts new administrative regulations and handles administrative matters including personnel, budget preparations, and office procedures.

Commission Staff

The staff of the Commission assumes all responsibility for the daily operations of the agency which include administration, legal, investigation, audit, information technology, and clerical functions. As a service oriented agency, the staff strives to assist individuals in complying with applicable laws by responding quickly, efficiently, and impartially. Commission staff also works diligently to ensure campaign finance and lobbying data is compiled, entered, and posted on the Internet to be viewed by the people of Kansas.

Current Commission Members

Nick Hale, Chairperson, Democrat, Prairie Village

Term expires January 31, 2021

Jerome Hellmer, Vice-Chairperson, Republican, Salina

Term expires January 31, 2022

Amy James, Democrat, Overland Park

Term expires January 31, 2021

John Solbach, Democrat, Lawrence

Term expires January 31, 2021

Todd Scharnhorst, Republican, Olathe

Term expires January 31, 2021

Kenneth Moore, Democrat, Kansas City

Term expires January 31, 2021

Kyle Krull, Republican, Overland Park

Term expires January 31, 2022

Jane Deterding, Republican, Wichita

Term expires January 31, 2022

Patricia Dengler, Republican, Wichita

Term expires January 31, 2022

Commission Staff

Executive Director – Mark Skoglund
Commission & Staff Attorney – Brett Berry
Office Manager – Sherry Fergel
State Candidate Report Examiner – Karina Renna
Local Candidate Report Examiner – Jennifer Schneider
Lobbyist Coordinator – Jessica White
PACs/Parties Coordinator, Auditor – Kaitlin Hubbell
Substantial Interests Coordinator/IT Specialist – Roxie Valdivia

Budget

In FY 2020, the Commission was originally appropriated \$395,476 from the State General Fund with a fee fund limitation of \$288,443. The following chart reflects revenue and expenditures for the fiscal year.

Fiscal Year 2020 Budget	Actual
Revenue:	
State General Fund Utilized	\$395,476
Fee Fund Utilized	\$249,024
Total Revenue Utilized	\$644,500
Expenditures:	
Salaries & Benefits	\$507,230
Contractual Services	\$134,555
Commodities	\$ 2,707
Capital Outlay	\$ 8
Total Expenditures	\$644,500

Legislative Activity

The 2020 Legislature did not pass any bills that impacted the Commission or the laws under its jurisdiction.

Organization & Operation

The Commission's efforts focus on full compliance with the Kansas campaign finance, conflict of interests, and lobbying statutes. Each year the Commission receives thousands of financial disclosure reports filed by candidates, political and party committees, public officials, and lobbyists. Staff time is devoted to assuring the accurate and timely disclosure of required financial information about those in state and local government. The processing and evaluation of filed reports and statements and an analysis of the supporting records, where appropriate, are crucial to the Commission's efforts. It is through the initial and comprehensive review of these reports, and the later audit and investigation when necessary, that the Commission can determine compliance with the laws.

The Commission's work encompasses five areas:

- (1) education and public awareness;
- (2) advisory opinions;
- (3) reviews and audits;
- (4) enforcement (including inquiries and investigations, the filing of complaints, holding public hearings and assessing civil penalties); and
- (5) general administrative activities.

Education & Public Awareness

The Commission's goal remains to improve communications regarding the reporting requirements of those subject to one or more of the disclosure laws, and to increase public awareness with respect to the impact and importance of information contained in the reports filed. The Commission's website has become an efficient instrument for disseminating and distributing Commission information. Information concerning the Commission, the advisory opinions it issues, scanned copies of state level candidate, party committee and political action

committee campaign finance reports, campaign finance and lobbying reporting forms, and campaign election and lobbying statistics can be found at <https://ethics.kansas.gov>.

The Commission utilizes informational brochures, the Internet, the news media, and speaking engagements to inform not only those under the Commission's jurisdiction, but also the public about the laws and their meaning. Statistical information is summarized and printed, in addition to being posted on the Commission's website, in the areas of campaign finance and lobbying. However, most time in this area is devoted to informing those directly covered by the laws of their duties and responsibilities. To accomplish this task, the Commission conducts informational seminars, and prepares and distributes handouts, campaign finance handbooks, lobbying handbooks, and conflict of interest laws brochures. In addition, staff fields calls to provide information and advice. In FY 2020 the Commission's staff made 13 presentations, all of which occurred prior to the COVID-19 pandemic.

Advisory Opinions

Advisory opinions are issued by the Commission to clarify the application of the statutes in a particular situation. The Commission can issue these opinions on its own initiative or in response to individual inquiries. If an individual requests an opinion and conducts themselves according to the guidelines in the opinion, they are presumed to be in compliance with the law.

Four opinions were issued in FY 2020. All four opinions were issued in response to inquiries by individuals. Since 1974, the year the Commission was established, through June 30, 2020, the Commission has issued a total of 1,255 advisory opinions. A synopsis of the four advisory opinions issued in FY 2020 can be found at the conclusion of this report.

FY 2020 Advisory Opinions

State Conflict of Interests – 3

Local Conflict of Interests – 1

Review & Audit Program

Complete, accurate and timely disclosure of certain kinds of financial information by candidates, elected officials, state employees and lobbyists is the key requirement of the legislation. Active review and auditing of reports is essential for the proper administration of the law.

CAMPAIGN FINANCE

In the area of campaign finance, the Commission's procedures include a preliminary review and post-election comprehensive desk review of all receipts and expenditures reports filed. In addition, a certain number of campaigns and committees are selected for field audits.

Candidates, party committees, and political committees filed 1,377 receipts and expenditures reports in FY 2020. All receipts and expenditures reports received a comprehensive desk review.

Additionally, staff processed 517 state candidates, 1070 county candidates, 242 city candidates, and 435 party and political action committees. The candidates, their treasurers, and the party and political committee officers all received handbooks, guides, statutes, and other material to assist them in understanding their responsibilities under the Campaign Finance Act.

Audits

Audits of the records of candidates and political action committees are conducted using generally accepted auditing standards and are conducted on a priority basis. Accorded first priority are situations involving formal complaints. The next priority is assigned to situations in which it is necessary to clarify problems identified during the desk reviews. A general investigation may also be authorized at this point.

Finally, a random sample of candidates and committees is audited. If a candidate is selected for a random audit, his or her opponent is also examined. In FY 2020, 1 campaign finance audit was conducted.

FY 2020 Campaign Finance Statistics

- Candidates for 2020 State Office - 517
- Carryover State Candidates – 129
- Candidates for 2020 County Office – 1070
- Carryover County Candidates - 95
- Candidates for 2019 First Class City Office – 242
- Carryover First Class City Candidates – 69
- Political Action Committees – 246
- Party Committees - 189
- Campaign Finance Reports Filed – 1,377
- Failure to File Notices Issued – 134
- Error or Omission Notifications Issued - 263

CONFLICT OF INTERESTS

The Kansas conflict of interests statutes provide for (1) the filing of statements of substantial interests; (2) a code of conduct making it illegal for state officials and employees to be involved in certain conflicts; and (3) the issuance of advisory opinions.

The Commission's staff processed and reviewed 5,557 financial disclosure statements filed by state officers, state employees, and elected officials in FY 2020. Throughout the year, staff updates computer databases as appointments are made, officials resign or their terms end, and new positions are created. Financial disclosure forms and instructions are mailed to new appointees and candidates as the Commission receives official notice of their appointment or eligibility. Thereafter, forms and instructions are emailed or mailed on an annual basis to all persons subject to the filing requirements. All financial disclosure statements are public records and may be reviewed during regular business hours in the Secretary of State's office or on the Secretary of State's website. Those required to file Statements of Substantial Interests are elected state officials and candidates for such office, individuals whose appointments are subject to confirmation by the Senate, general counsels for state agencies, and state officers, employees, and members of boards, councils or commissions meeting the definition of a "designee" and so listed by the head of their agency.

2020 Statements of Substantial Interests Filings

- Employees Listed as Designees – 4,970
- Elected Officials – 184
- Appointees Subject to Senate Confirmation – 34
- Board Members Listed as Designees – 340
- General Counsels - 29

The Commission has found that the conflict statutes are not widely understood either by state officers, state employees or the public at large, yet these laws are of fundamental importance to the workings of state government. They draw the line between private interests and the public trust which must be guarded carefully. Efforts to clarify and enforce the line are increasingly important as public concern mounts over abuses of the public trust.

Many state officials and employees are in a position to make or influence decisions which could directly affect their personal interests. The state conflict of interest laws prohibit such activity. To assist these individuals, the Commission issues advisory opinions upon its own initiative and upon the request of any person to whom the relevant law applies.

REPRESENTATION CASE DISCLOSURE

There were zero Representation Case Disclosure Statements filed in FY 2020. It is possible that individuals required to file such statements have not done so. However, given the structure of the statutory requirements, there is no way of knowing who should file such statements.

LOBBYING PROVISIONS

There are 552 lobbyists registered for calendar year 2020 as of November 16, 2020. This compares with the total of 560 registered lobbyists in calendar year 2019. Of the 552 registered, some are registered on behalf of more than one person or organization. To date, 1,644 organizations or persons have been represented this year. This compares to 1,543 organizations being represented by a lobbyist in 2019. The Commission's statistical analysis of the lobbyist employment and expenditures reports filed shows that \$769,979 has been spent on lobbying activities through August 31, 2020. Registered lobbyists are required to file a lobbyist employment and expenditures report six times a year. These reports show expenditures if the lobbyist spent more than \$100 in a reporting period. To date this calendar year, 7,752 Lobbyist Employment and Expenditures Reports have been filed. A lobbyist can file an Affidavit of Exemption from filing the Lobbyist Employment and Expenditures Report if they do not expend in excess of \$100 in any reporting period.

Lobbyist Registrations and Expenditures

To Date for Calendar Year 2020

- Number of Registered Lobbyists – 552
- Number of Lobbyist Registration Statements Filed – 1,644
- Number of Reports Filed by Lobbyists – 7,752
- Number of Affidavits of Exemption Filed – 554
- Total of Expenditures for Year to Date – \$769,979
- Number of Failure to File Notices Issued - 111

Enforcement Program

INQUIRES & INVESTIGATIONS

In FY 2020, the Commission conducted 30 investigations. Investigations can be conducted prior to a complaint being filed or following the filing of a complaint. Inquiries and investigations remain confidential until a complaint has been filed and a probable cause determination has been made regarding the complaint. Whenever an investigation does not disclose facts sufficient to warrant further action, the Commission may issue a report concerning the findings of the Commission to the person or persons investigated. This report can be made public by the person or persons investigated.

COMPLAINTS

There were 15 complaints filed in FY 2020. Seven complaints were dismissed on the basis that there was insufficient evidence to support a probable cause determination or were dismissed after being set for hearing. One complaint was dismissed after probable cause was found before a hearing was held. Seven complaints had public hearings. It should be understood that after an investigation, if the Commission concludes there is no evidence to establish probable cause that there was an intentional violation of law, a complaint is dismissed and no public hearing is held. The determination as to whether an intentional violation has occurred is a decision which is not reached until the conclusion of a public hearing. Anyone who suspects that any of the provisions administered by the Commission have been violated may file a complaint in writing with the Commission.

CIVIL PENALTIES & FINES

The statutes enforced by the Commission provide for the assessment of civil penalties for failure to file certain reports or statements under the campaign finance, lobbying and state conflict of interest statutes. Individuals can be subject to a \$10 per day penalty for each day the report or statement remains unfiled up to a maximum of \$300. Effective July 1, 2018, for primary and general election campaign finance reports, as well as for lobbyist expenditure reports, the civil penalty is \$100 for the first day and \$50 for each day the report remains unfiled up to a maximum of \$1000. The Commission is authorized to waive any imposed civil penalty upon a finding of good cause. There were civil penalties totaling \$38,610 assessed and \$10,680 in civil penalties waived in FY 2020. The Commission collected \$14,205 in civil

penalties. A few civil penalties which were assessed in prior years were collected in FY 2020. Some of the civil penalties assessed in previous years still remain outstanding.

In addition to any other penalty prescribed under the campaign finance, lobbying or state conflict of interest statutes, the Commission can assess a civil fine not to exceed \$5,000 for the first violation, \$10,000 for the second violation and \$15,000 for the third and each subsequent violation. Before a civil fine can be assessed, the person must be given proper notice and an opportunity to be heard. Civil fines in the amount of \$14,100 were assessed in FY 2020 as a result of four civil fine hearings. Of these fines, \$5,800 has been collected. In FY 2020, \$10,578 in civil fines was collected, which includes fines assessed in previous fiscal years.

FY 2020 Civil Penalties and Fines

Campaign Finance Civil Penalties Assessed - \$19,520

Lobbying Civil Penalties Assessed – \$19,050

Statement of Substantial Interests Civil Penalties Assessed - \$40

Total Civil Penalties Assessed – \$38,610

Total Civil Penalties Waived – \$10,680

Total Civil Penalties Collected - \$14,205

Total Civil Fines Assessed – \$14,100

Total Civil Fines Collected - \$10,578

Commission Recommendations

The Commission is directed by statute to make recommendations to the Governor and Legislature. It recognizes that any major piece of legislation periodically needs revision, modification, and in some cases, major changes. To that end, the Commission makes the following recommendations:

1. **Electronic Filing for State Candidates** - K.S.A. 25-4148 permits state and local candidates, other than for statewide office, to file their campaign finance reports on paper or electronically. Candidates for statewide office must file all forms electronically. Requiring electronic campaign finance reporting would provide a wide variety of benefits, including but not limited to:
 - Cost and efficiency savings regarding data entry reductions and more rapid report processing;
 - Cost savings from decreased numbers of Errors and Omissions notices sent due to errors that could be prevented by filling fields in an electronic form, such as calculation errors and required fields not being left blank;
 - Decreased costs for printing forms and reports;
 - Increased accuracy of data presented to the public as it would reduce avenues for errors;
 - Increased transparency and decreased time delay in presenting campaign finance data to the public.

Due to these benefits and others, the Commission believes that significant benefits warrant requiring electronic submission of all campaign finance reports for state office. In doing so, Kansas would be joining 40 states that already have this requirement.

The Commission supports the granting of exemptions for good cause shown, determined by the discretion of the Executive Director.

2. **Disposal of Campaign Assets** – K.S.A. 24-4157a prohibits candidates from using campaign contributions “for the personal use of the candidate,” and indicates that campaign contributions may only be utilized for one of seven itemized exceptions. Candidates are specifically prohibited from making expenditures that “defray normal living expenses for the candidate or the candidate’s family” or that are “for the personal benefit of the candidate having no direct connection with or effect upon the campaign of the candidate or the holding of political office.”

While the statute’s intention is clear that candidates should not be permitted to make a purchase of equipment such as a laptop or cell phone and then keep the item personally after the campaign has terminated, the language in the statute would be well served with additional clarity. The Commission believes there are scenarios where equipment is legitimately purchased for a campaign and then after terminating the campaign account, the candidate keeps the item for personal use rather than for continued campaign purposes. This scenario presents an impermissible use of campaign assets, and the statute could be altered accordingly to more clearly prohibit this situation.

For federal candidates, the FEC requires that when closing their campaign accounts, they must sell campaign assets for fair market value, or purchase the items from the campaign for fair market value, rather than keeping the items personally. A similar model could exist for Kansas with some statutory clarity.

3. **Lobbyist and Statement of Substantial Interest Late Filing** – K.S.A. 46-280 provides that the Commission shall send a notice to any lobbyist who has not timely filed a report and any individual who has not timely filed a Statement of Substantial Interest form. The statute, as amended by 2018 HB 2642, increased the civil penalties for lobbyist expenditure reports and shortened the applicable grace period to file the form without penalty. The amended statute creates a potential conflict in the notice provision regarding whether the grace period begins from receipt of the notice or from the sending of the notice. Since lobbyists and individuals subject to filing Statements of Substantial Interest are aware of the relevant deadlines and in order to create consistency with similar statutory provisions in other areas, the Commission recommends a procedural amendment so that the grace period provided in statute begins running from the time the Commission sends the notice of failure to file, rather than from the time of receipt.

4. **Other social media attribution** - K.S.A. 25-4156(b)(1)(E) defines corrupt political advertising as any person making (or causing to be made) any website, e-mail or other type of internet communication which expressly advocates the nomination, election or defeat of a clearly identified candidate for a state or local office to follow such matter with a statement which states: "Paid for" or "Sponsored by" followed by the name of the chairperson or treasurer of the political or other organization sponsoring the same or the name of the individual who is responsible therefor. Appending such attributions to e-mails is analogous to printed matter and compliance with the attribution requirement is simple and straightforward. Compliance for some websites and some social media websites can be difficult or impossible.

The Commission believes that the rigid formats of certain websites or other internet communications make appending the required attributions problematic or impossible. The Commission believes the Legislature should consider methods to require clear and conspicuous attribution on social media platforms.

Appendix I

**SUMMARY
OF
ADVISORY OPINIONS
ISSUED IN
FY 2020**

Opinion No. 2019-04 – Issued July 24, 2019

A former state employee is not prohibited from accepting employment with a private business when the employee was not substantially involved in the making of contracts between the state and the business. Additionally, the employee's request to return to work for the state in a different state agency while retaining their position with the private business would not violate the ethics laws.

Opinion No. 2019-05 – Issued October 23, 2019

A local government employee does not have a substantial interest in a business that employs the employee's sibling.

Opinion No. 2020-01 – Issued January 22, 2020

Under the facts presented, a state employee may accept employment with Business A that is associated with, but meaningfully distinctly separate from, Business B, when the employee participated in the making of a contract between the state and Business B. The two-year waiting period would not apply.

Opinion No. 2020-02 – Issued April 22, 2020

A state employee may accept employment with a business where the employee participated in the making of a competitively bid contract between the state and the business, and where amendments to the contract were not renegotiations or new negotiated terms to the underlying competitively bid contract. The two-year waiting period would not apply.

Appendix II

STATISTICAL COMPARISON OF LOBBYING EXPENDITURES 2010-2020

Statistical Comparison of Lobbying Expenditures 2010-2020

Year	Number of Lobbyists/Registrations		Food and Beverage	Recreation	Entertainment Gifts Honoria and Payments	Mass Media	Communications	Other	Total
2010	541	1505	\$416,821	\$18,638	\$15,395	\$632,498	\$306,451	\$21,063	\$1,410,868
2011	568	1562	\$468,229	\$12,621	\$19,245	\$185,944	\$16,657	\$19,746	\$722,445
2012	550	1531	\$475,936	\$9,613	\$16,143	\$134,899	\$114,851	\$12,791	\$764,236
2013	542	1506	\$551,649	\$26,126	\$13,154	\$642,475	\$60,457	\$10,279	\$1,304,140
2014	548	1585	\$523,393	\$15,813	\$24,495	\$507,340	\$104,323	\$12,037	\$1,187,401
2015	557	1672	\$570,815	\$14,926	\$21,532	\$609,551	\$505,443	\$23,242	\$1,745,509
2016	552	1491	\$456,850	\$9,271	\$9,491	\$144,365	\$370,759	\$3,074	\$993,810
2017	556	1520	\$564,296	\$8,360	\$20,367	\$134,048	\$766,018	\$13,110	\$1,506,199
2018	538	1478	\$527,483	\$6,993	\$7,553	\$76,192	\$309,068	\$13,781	\$941,071
2019	560	1543	\$500,852	\$4,470	\$8,775	\$126,785	\$664,674	\$18,941	\$1,324,497
2020 YTD	552	1644	\$364,559	\$1,862	\$18,769	\$27,826	\$343,631	\$13,332	\$769,979