 These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks

report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes.

SENATE COMMITTEE ON REDISTRICTING

March 5, 1991Hearing Room "B" 3:00 p.m. Tapes 24 - 25

MEMBERS PRESENT:Sen. Glenn Otto, Chair Sen. Dick Springer, Vice-Chair Sen. John Brenneman Sen. Jim Bunn Sen. Scott Duff Sen. Mae Yih

MEMBERS EXCUSED:Sen. Bill Bradbury

STAFF PRESENT: Gail Ryder, Senior Committee Administrator Joan Green, Committee Assistant

MEASURES CONSIDERED: SB 288 - Relating to election law civil penalties, WS SB 690 - Relating to false statements in political solicitations, PH/WS

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TAPE 24, SIDE A

006 CHAIR OTTO: Called the meeting to order at 3:11 p.m.

(TAPE 24, SIDE A)

PUBLIC HEARING

SB 690 RELATING TO RELATING TO FALSE STATEMENTS IN POLITICAL SOLICITATIONS

Witnesses:Grattan Kerans, Oregon State Senator, District 20 Phil Keisling, Secretary of State

006 GRATTAN KERANS, OREGON STATE SENATOR, DISTRICT 20: Discusses SB 690, we need to have "truth in advertising" regarding political solicitation. Since we are adopting the perpetual fund raising model, candidates, when making a solicitation of funds, should base it on an accurate reflection of circumstances. The perception problem can be addressed by changing the procedure, to present a bright line between what is or is not acceptable in a solicitation. ORS 260, under the authority of the Secretary of State, would grant the ability to take action as outlined in §2.

039 BUNN: Requests clarification for legislative intent. At the end of a campaign a candidate owes $3,000, but they have $4,000 left in a postal account, is that postal account considered an unexpended account? Could the person, under the new bill, claim a deficit?

046 KERANS: No, the Secretary of State would count that as an asset.

052 BUNN: If I have computer equipment worth $4,000 and I have $3,000 outstanding, where does that come in, if my assets outweigh my liabilities?

055 KERANS: Refers to SB 690, pg. 1, lns. 6-8, "unexpended balance of contributions" are the operative words. The postal account would be a liquid asset. The computer equipment would be a fixed asset, which might be carried forward as a balance on your next campaign as an asset. It doesn't represent an "unexpended balance of contribution".

073 BUNN: I would hope the line that is drawn is a clear bright line. I

would have listed the postal account as an expenditure.

076 KERANS: It is not expended. There would be a problem if the money disappeared and was not counted as an asset of the campaign, it needs to be listed. You must be able to say there was a deficit at the time the letter was sent and liabilities exceeded assets on that day. That is a material question which can be proved.

091 BUNN: Would you need a promissory note for money owed to your caucus, yourself or a relative, how would that be dealt with for clarification?

095 KERANS: A comparison of the accounts payable sum and the cash on hand sum in the contributions and expenditures (C & E) report would constitute a material fact. You could publish the letter on that day based on those facts.

102 BUNN: If a C & E coincides with the date of the fund raising letter?

104 KERANS: Yes, you must have liabilities greater than assets for deficit fund raising following a campaign.

108 BUNN: Discusses floor debate on March 4, 1991 dealing with ethics law. Is SB 690 based strictly on the facts and "knowledge and intent" have no play?

114 KERANS: Reads SB 690, pg. 1, ln. 6-9, this constitutes a material fact that an investigation would show.

125 BUNN: I did my own C & E so I was continually aware of the finances. However, other candidates have a treasurer who handles all of that. For clarification, is the Secretary of State required to prove "knowledge"?

129 KERANS: Yes.

131 BUNN: It is important to recognize that we are saying the Secretary of State must prove my level of "knowledge" in order to deal with this.

137 KERANS: ORS chapter 260 charges the candidate with the requirement to have such knowledge and does not absolve us of that when we appoint a treasurer. ORS 260 gives a parallel charge to both the treasurer and the candidate for the content of the C & E's and the condition of your finances. That is "knowledge" as opposed to the question of "knowingly" as used in the bill that was debated on the floor yesterday. This bill states when you have a deficit fund raising solicitation you are assumed to know.

158 BUNN: Earlier you said it would be the Secretary of State's responsibility to prove "knowledge". We also recognize incidents when a candidate functions in this arena and a treasurer deals with the finances. The candidate may or may not see the deposits, the checks, the check register or sign the C & E's; the treasurer has the responsibility, if they sign that. We need to clarify if a candidate or person sending the letter has the responsibility of "knowledge", if they don't send out something that is true, by the fact that it is false, is that proof? The bill has merit, but I want to be clear what we are asking the Secretary of State to do.

171 KERANS: Reads SB 690, §2, lns. 5-7. This alerts candidates and also "other person" (i.e. treasurer) that they shall not solicit a contribution, etc.

177 BUNN: I don't see in parentheses after "other person" where treasurer is specified. What if a fund raiser, not the treasurer or candidate, puts out a false piece of information and the candidate and/or fund raiser states they did not know it was false, would the Secretary of State need to prove that the fund raiser and/or the candidate "knowingly" solicited? Am I reading it wrong?

189 KERANS: I don't know the answer, as to "other person". It would certainly not apply with regards to the relationship of a candidate and treasurer.

194 BUNN: Returning to your earlier statement that the Secretary of State was responsible to prove that I "knowingly" did something; aren't

you providing me the option of pleading ignorance, that my treasurer did not tell me a check came in the same day I sent out the fund raising letter?

199 KERANS: I think the candidate and treasurer have an obligation to know. Under ORS 260, any deficit fund raising solicitation must be based on that fact.

206 BUNN: Isn't it possible under this bill to create a situation where a candidate could send out a fund raising letter that was not factual without "knowledge" that the solicitation contains a false statement?

211 KERANS: No, and it covers both the treasurer and the candidate. The example of the fund raiser was not taken into consideration when this bill was drafted and the Committee may want to further amend SB 690 to include that person. ORS 260 does not require a contractor, (i.e. a paid fund raiser) to have "knowledge" required by the treasurer or candidate.

227 BUNN: I will address the question to the Secretary of State's office when they testify of what the requirement is of a treasurer and a candidate to share common knowledge?

228 KERANS: The intent of the legislation is straightforward. It needs to be clear to candidates, that when either they, or someone else, makes a solicitation for their behalf, the solicitation must be a true and accurate statement of the deficit for which the fund raiser is being done. I had not thought of someone acting as an agent for the candidate and possibly making a defense that they did not know and there is no requirement to know. Legislative Counsel may want to address §2 and whether "knowledge" creates an affirmative duty on behalf of any person uttering the fund raising solicitation to ascertain whether a deficit truly exists and a truthful statement is being made.

270 PHIL KEISLING, SECRETARY OF STATE: I strongly support the effort embodied in SB 690 to deal with the problems related to campaign fund raising solicitations. There may be other ways, in addition to SB 690, to deal with the problem. Currently our office only addresses false statements in a publication, under the very specific circumstance of a false statement, with relation to occupation and educational credentials, that appear in the voters' pamphlet.

287 KEISLING: If we get a complaint of a false statement or have reason to believe one has been made, and determine there is reason to proceed, we refer the matter for investigation to the Attorney Generals (AG) office. The AG's office performs the investigation and decides whether to proceed with criminal prosecution. Falsification in the voters' pamphlet is a Class C felony. Refers to the 1985 case of Pat Gillis and the allegation of a false statement relating to his education credentials in the voters' pamphlet. That case went to a Grand Jury in Marion County with an indictment following and a trial being held. That is the only jurisdiction we have under current law with respect to false statements.

326 KEISLING: Refers to ORS 260.532 which governs false statements made in a campaign. The language in the statute is fairly broad, but the arena for remedy under current law is in circuit court. An aggrieved party can allege a statement was falsely made with knowledge or with reckless disregard and bring an action in circuit court. The action in circuit court must show by a clear and convincing standard that the false statement occurred. Damages involve compensatory damages for all injuries suffered, attorneys fees and in certain cases, if it can be shown by a clear and convincing standard that the false statement reversed the outcome of the election, the court can order the office to be declared vacant. This latter remedy does not apply in the case of a legislator because of the constitutional stricture that the legislature governs the qualifications of its members. The way we understand the law is, if a false statement is made with respect to fund raising solicitation during a campaign, that false statement would be amenable to this kind of circuit court remedy. This remedy would not apply in a case following a campaign when the person is no longer a candidate, as candidate is defined. If the Committee should decide to have the circuit court remedy available, either in addition to or instead of SB 690, the definition of candidate could be broadened to apply in these post-election kinds of circumstances.

361 KEISLING: SB 690 creates a third procedure in the ORS to deal with false statements. The bill amends ORS 260, in general, and a false statement would become a civil penalty of up to $250 maximum. This would be handled in terms of the typical penalty assessment and hearing process now used for C & E violations. There would be some fiscal impact. To help administer this law, if it should be adopted, it would be helpful to know what the standards are for key terms such as "false" and "knowledge" and does this include verbal solicitations as well as written solicitations? You might also address the burden of proof issue. The circuit court remedy would be available for false statements where an opponent is accused of having a criminal record or accusing someone of voting for a bill when, in fact, they did not. The Secretary of State's office would adjudicate a false statement accusing an opponent of making a false representation in a fund raising letter. It becomes a policy decision as to whether the Secretary of State will be responsible for false statements only in this category, while the others remain in the circuit court, or should our role be broadened to handle all false statements? The broader approach is a tremendous new obligation, fraught with difficulty and extremely sensitive, and has not been fully addressed by our office. Our office is willing to work with the Committee to produce something that will work, address the problem and make a very clear statement.

454 BUNN: Do you see any possibility that by putting this into your arena the $250 maximum civil penalty might, in any way, take precedence over another penalty that might exist?

464 KEISLING: Such as a criminal penalty, for example, if a determination were made under federal law for violation of a federal law?

467 BUNN: If the county district attorney (DA) were investigating something, would this possibly supersede because the legislature had set the penalty and the manner in which to handle this type of case, rather then it being treated as a criminal case?

475 KEISLING: I don't know, I will find out and respond.

479 BUNN: The bill, as I understand it, deals only with false statements about balances in the bank. A candidate could send a fund raising letter making false statements about themselves or their opponent in an effort to raise money and this bill would not address that, correct?

489 KEISLING: The bill has been drafted to focus on those questions.

TAPE 25, SIDE A

032 BUNN: Sen. Kerans view was a candidate and treasurer must have "knowledge" of the condition of their finances. By that definition they would have "knowledge" that a solicitation contains false statements, are you comfortable with that position?

038 KEISLING: Comfortable with what?

040 BUNN: There is a candidate and a treasurer, the treasurer handles the finances and the candidate is not intimately aware of the finances. If a candidate sent out, in good faith, a fund raising letter for a deficit, believing there was one, would they have had "knowledge" that the solicitation contained a false statement?

047 KEISLING: ORS 260.037 puts the obligation on the candidate to be personally responsible for the performance of the treasure in filing C & E statements. I am not sure current law speaks specifically to the situation you describe. I think it is a policy question that would speak to the issue of "knowingly". If the Legislature does not specify that, we would need to come up with a method to ascertain what is "knowledge". The Legislature's guidance would be helpful to us.

062 BUNN: If we don't define it further are you comfortable with your ability to deal with a professional fund raiser, a consultant, a candidate, a treasurer, any one of those or all of the four, to determine whether or not they had "knowledge"?

065 KEISLING: We would need further guidance then what is currently in

the bill.

067 BUNN: Do you support the bill as drafted?

067 KEISLING: I support the concept. I think a better way would be to expand the existing remedy already available in the circuit court, to adjudicate the falsity of statements, and use our office as a clearing house for complaints that would be filed. The bill would put us, for the first time, into the position of adjudicating the falsity of statements. If we are going to enter this arena then we should do it for all false statements. I can work with this, but I would prefer an alternative approach to address the problem.

094 OTTO: When would you be available to meet?

095 KEISLING: I would be available immediately to work with Sen. Kerans and members of the Committee.

098 OTTO: Immediately meaning right now?

100 KEISLING: I could.

101 OTTO: Let's set a date sometime in the future and check with you within a day or two.

103 KEISLING: Concurs.

108 RYDER: Are there members who would like to be notified of a work group meeting? No.

(TAPE 24, SIDE A)

WORK SESSION

SB 288 RELATING TO RELATING TO ELECTION LAW CIVIL PENALTIES

Witnesses:Ted Reutlinger, Legislative Counsel

117 RYDER: This bill was brought back from the floor because a portion of the amendment was missing. Reads SB 288 A-engrossed, pg. 1, lns. 25-26, but it did not state that it was at the request of someone. Distributes the -A3 amendments to SB 288 dated 03/05/91, Exhibit A and a letter of opinion, Exhibit B. Effectively under ORS 260.232 and 260 .995 you would have either a 52 day period or the possibility of a 65 day period, Mr. Reutlinger wanted to bring that to your attention to determine if that was, in fact, your intent.

153 SPRINGER: Could you refresh my memory on what ORS 260.232 and 260.995 (3) refers to?

157 RYDER: ORS 260.232 is the civil penalty for failure to file statement or to include information. ORS 260.995 (3) is a civil penalty following an investigation for an action, by the Secretary of State or the Attorney General, for an election offense. They are separate.

169 SPRINGER: Sen. Gold had the strongest interest in this legislation, have we conferred with her as to her feelings?

Recessed at 3:54 p.m.

Reconvened at 4:04 p.m.

179 RYDER: Sen. Gold reviewed the -A3 amendments to SB 288, Exhibit A and the letter of opinion, Exhibit B. Her request would be for the Committee to adopt an amendment that would allow, at the discretion of the person against whom the penalty may be assessed, the option of the additional 15 days. Sen. Gold had no problem with the difference in the numbers in each statute and would leave that to the Committee to decide.

193 TED REUTLINGER, LEGISLATIVE COUNSEL: There are two sections in ORS 260 that give the Secretary of State the power to impose the penalty. Each of these sections is amended in this bill to require that the hearing be held not later than 30 days after the deadline for requesting a hearing. Reviews the letter of opinion, Exhibit B. The way it is currently written leaves a slight difference as to how many total days

you get.

224 BUNN: Is there any legal problem with leaving different time periods?

226 REUTLINGER: I don't think so, it is different under current law, and to the best of my knowledge no one has challenged that.

231 BUNN: Since no one has expressed a concern about the differences I would suggest we leave it as it is and try to get it out as the Committee intended to last time. I don't believe the -A3 amendments to SB 288, Exhibit A reflect Sen. Gold's intent. I believe she intended that the individual could request, and would automatically receive, that extension. The Secretary of State testified that 30 days was enough time for them, but they were concerned about the individual needing the flexibility. There is no need to set the requirement of approval by the Secretary of State or the Attorney General when it would be automatic, if requested by the individual. I believe if on lns. 3-4 we deleted "and approved by the Secretary of State" and on lns. 9-10 delete "and approved by the Secretary of State or Attorney General" that would meet Sen. Gold's intent.

259 OTTO: Would that meet with your approval Mr. Reutlinger?

259 REUTLINGER: Yes.

260 MOTION: SEN. BUNN MOVED THE -A3 AMENDMENTS TO SB 288 DATED 03/05/91 BE ADOPTED WITH THE DELETION ON LNS. 3-4 OF "AND APPROVED BY THE SECRETARY OF STATE" AND LNS. 9-10 OF "AND APPROVED BY THE SECRETARY OF STATE OR ATTORNEY GENERAL". MOTION ACCEPTED BY ACCLAMATION.

268 MOTION: SEN. BUNN MOVED SB 288-A-ENGROSSED TO THE FLOOR WITH A DO PASS AS AMENDED RECOMMENDATION.

274 VOTE: MOTION CARRIED, 6-0. (EXCUSED: SEN. BRADBURY). SEN. BUNN WILL LEAD THE FLOOR DISCUSSION.

278 Meeting adjourned at 4:10 p.m.

Submitted By: Reviewed By:

Joan Green Jayne Hamilton
Assistant Assistant

EXHIBIT LOG

A - SB 288-A3 amendments, Staff, 1 pg. B - Letter of opinion, Staff, 1 pg.