

CANVASSING KANSAS

An update on election news from the Kansas Secretary of State's office

Biggs Appointed SOS

Governor Mark Parkinson appointed Chris Biggs as Kansas' 30th Secretary of State on March 16, 2010. Upon appointing Sec. Biggs, Gov. Parkinson cited his experience, professionalism, and dedication.

"Chris has been in public service for more than twenty years, demonstrating an unwavering commitment to our state, our citizens, and our future," Parkinson said. "Chris will bring his forward looking vision to the Office of the Secretary of State while increasing the efficiency and participation in Kansas' elections."

A Kansas native, Sec. Biggs grew up in Manhattan, Kansas with four siblings. His father worked at a hardware store and as a state restaurant inspector, while his mother worked as a secretary at K-State. Sec. Biggs earned a bachelor's degree from KSU in 1980 and a juris doctorate from KU in 1983.

Following graduation, Sec. Biggs began his career in public service in 1983 as a Deputy Public Defender for the 8th Judicial District in Kansas before being elected Geary County Prosecutor in 1988. As the Geary County Prosecutor, Sec. Biggs was reelected three times prior to being appointed Kansas Securities Commissioner by Gov. Kathleen Sebelius in 2003.

As the state's Securities Commissioner, Sec. Biggs frequently stepped out from behind his desk to protect Kansas investors. He and successfully prosecuted numerous securities fraud cases, including most recently the founder of a bankrupt theme park in Wichita which had defrauded investors of millions of dollars.

Sec. Biggs currently lives in rural Geary County with his son Ben who is eight. In his free time, Sec. Biggs likes to fish, play basketball, and pick the guitar and banjo.

Read more about Sec. Biggs on page 4.

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Business Reply Mail Limited in Application

Since the implementation of the National Voter Registration Act in the mid-1990s, the SOS office has maintained a business reply permit and authorized CEOs to use the permit for official election mailings. This saves each county the current \$185 annual fee. Some counties, especially smaller ones, are finding that using the permit might not save them money.

A case in point is Morris County, where County Clerk Michelle Garrett discovered that she was charged \$1.18 per piece in total postage for confirmation mailings she had sent for the annual National Change of Address (NCOA) program. The \$1.18 is for

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The HAVA Report

Endowment Program

The 2009/2010 endowment program is nearing completion. More than \$1.3 million was budgeted and will be disbursed by the SOS office from HAVA funds for the program. Counties collectively paid for ten percent of the program in addition to the state's portion. One new item this year was electronic poll books. Several dozen counties purchased these devices for the 2010 elections. The SOS office issued a request for proposal and concluded contracts with four vendors, three of which sold to one or more counties (ES&S, Premier and Election Administrators). A number of counties purchased ballot programming software, adding to the number of do-it-yourself counties in Kansas.

Secretary of State Chris Biggs has approved continuation and expansion of the endowment program for state fiscal year 2011 (FY 2011 runs from July 1, 2010 through June 30, 2011.). A total of \$1.1 million was included in the SOS agency budget for state fiscal year 2011 (calendar year 2010), and Secretary Biggs requested and received approval from the Kansas Legislature for an additional \$1.5 million in spending authority to expand the program. Also, Secretary Biggs issued an invitation to CEOs at the KCCEOA conference on May 6 to submit new ideas for spending funds for the HAVA purpose of "improvements in election administration." The SOS elections office is compiling the suggestions and will distribute an endowment application form to all CEOs.

ELVIS Workstation Fees

The fee each county will be assessed for 2011 remained the same as 2010—\$300 per workstation. An order form was distributed at KCCEOA on May 6.

Graphic Design of Elections Forms

Kansas is among the states that have used small portions of HAVA funds for a review of ballots, literature and forms by graphic designers. The SOS office recently concluded a one-year contract with Willoughby Design in Kansas City, MO for a review of ballot forms, advance voting forms, petition forms and voting instructions. The results of Willoughby's work were distributed to CEOs at the KCCEOA conference, and the two individuals who worked on the project, Zack Shubkagel and Grant Nitsch, made a presentation during the conference on May 6. If the contract is extended for another year, Willoughby will be reviewing posters, envelopes and informative brochures.

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Accessibility Products Order Form

There have been new products developed in the past few years that some CEOs might be interested in acquiring to improve accessibility of polling places. The order form the SOS office has used has not been changed since the early days of HAVA. We plan to add several new products to the order form and distribute it to all CEOs in the near future. The remaining grant funds the state has received from the U.S. Department of Health and Human Resources will be used for this purpose.

Funding

The initial two appropriations by Congress shortly after the passage of HAVA did not fully fund the levels authorized by the law. Congress has passed several subsequent funding bills to supplement the initial funding, which requires states to apply for the funds and to certify that they are in compliance with various aspects of the law in order to receive the money. All the funds except the accessibility grant funds require a five percent state match. The three most recent appropriations provided by Congress were made available in federal fiscal years 2008, 2009 and 2010. Kansas' share of the 2008 appropriation was approximately \$1 million; in 2009 it was approximately \$900,000, and in 2010 it was over \$600,000. The SOS office applied in early 2010 for the 2008 money and, at the time of this writing, is working on certification for the 2009 and 2010 money. The Legislature appropriated the \$55,477 state match for the 2008 money but declined to appropriate the match for 2009. The SOS office must fund the state match requirement for 2009 and 2010 using other funds. The HAVA money goes into special funds created in 2004 by the Kansas Legislature for HAVA, where it draws interest until needed to pay bills.

MOVE Act Update

Plans for implementation of the MOVE Act (Military and Overseas Voter Empowerment) are still in the works, but they are moving forward with a deadline in just a few months. The requirements of MOVE and the early plans for its implementation have been detailed in previous issues of this newsletter (see *Canvassing Kansas*, Dec. 2009, page 4 and Mar. 2010, page 11).

During the past 90 days, the Federal Voting Assistance Program (FVAP) has issued its request for quotes and has approved six vendors.

Several of the approved vendors have conducted demonstrations for the Kansas SOS office. For its part, the SOS office has submitted a specification to the FVAP detailing the features it would like to see in a vendor-supplied solution. The FVAP will consult with the state about the features of its specification and will match the state with the most appropriate vendor. Once the matching process is completed, the FVAP will purchase the solution from the vendor for installation in the state's system.

FVAP's plans are to implement the requirements of MOVE for the November, 2010 general election. If possible, the SOS office would like to use the same system in the August primary as in the general election, but it remains to be seen if that will be possible.

The SOS office will provide more information to CEOs as the plans develop further, but all CEOs should be prepared to participate in the program by providing all voting information, instructions and ballots to overseas military and civilian voters electronically upon request by the voters. It is anticipated that some overseas ballots will still be mailed and faxed, but many of the voters qualifying under the federal UOCAVA law will probably opt for emailing their ballots once they are aware of the option.



CHRIS BIGGS
Kansas Secretary of State

Dear Colleagues,

I was honored to be appointed Secretary of State by Gov. Parkinson in March. Since that time, I've been working hard to familiarize myself with the office, the issues, and the staff.

Fundamentally, I believe that the Secretary of State's Office should be about public service, not about politics. That's why I'm committed to ensuring the office is efficient and effective in managing the business of the state and is easily accessible to the citizens of Kansas.

I think Ron Thornburgh did a good job managing the office, and I hope to pick up where he left off. I have every confidence in the current staff. In my short time here, I have been consistently impressed by the professionalism and competency of the office; everyone is dedicated to doing their job to the best of their ability.

Obviously, the upcoming elections will be a priority for both my office and yours. Maintaining the integrity of the voting process is important to me, as is voter turnout. If you have ideas on how we can engage the citizens of Kansas in the civic process, please pass those along. I requested and received from the Legislature additional HAVA funds that will be available for voter education activities this cycle.

I enjoyed the opportunity to talk with many of you at the Kansas County Clerks and Elections Official Association conference last month. I hope to continue that conversation by getting out of the office and travelling across the state in June and July and meeting with as many of you as possible on an individual basis. It's important to me to hear from you about what issues you're concerned about and how we can better serve you.

As Secretary of State, I intend to maintain an open door policy. Should you ever have questions or concerns about the office, please do not hesitate to contact me by phone at: 785-296-4575 or by email at: chrisb@kssos.org. I look forward to working with each of you to ensure the success of the primary and general elections!

Sincerely,

CHRIS BIGGS
Secretary of State

2010 KCCEOA Conference Held in Topeka

The Kansas County Clerks and Election Officials Association held its annual spring conference in Topeka at the Holiday Inn Holidome from May 5 through 7, 2010. This year's theme was Capital City Royale.

Wednesday, May 5 was a full day of meetings, including opening remarks by Secretary of State Chris Biggs, who was representing Governor Mark Parkinson. Secretary of Revenue Joan Wagnon also made a presentation. There was a county clerk panel titled "Doing More with Less."

Thursday, May 6 was the day for elections training by the Secretary of State's office. Sometimes called "HAVA Day," this is the day given to the SOS office by KCCEOA every year since 2004, which was the first year after passage of the state HAVA implementing legislation when CEO elections training became required.

The SOS presentation was divided into four sessions.

Session 1: General Issues

Secretary of State Chris Biggs opened the session with a welcome and general comments about his policies and intentions as Secretary, having been appointed in March to succeed former Secretary of State Ron Thornburgh. Secretary Biggs emphasized his open door policy and that he seeks input from CEOs about how best to administer the electoral process in Kansas. He commended the counties on their previous work in conducting elections and stated his goal to continue that success in 2010.

Brad Bryant, State Election Director, gave an update on legislation. Bryan Caskey, Assistant Election Director, made remarks about census and redistricting, general HAVA issues, and the ES&S/Premier merger.

Carol Williams and Jana Atchison from the Kansas Governmental Ethics Commission presented an update on campaign finance and ethics, including reminders about the various filings that are required in election years.

Session 2: Graphic Design

Zack Shubkagel and Grant Nitsch from Willoughby Design in Kansas City, Missouri explained the process they used to review Kansas ballots and elections forms. Willoughby Design's services were secured by the Secretary of State with a contract executed through the American Institute of Graphic Arts' Design for Democracy office.

Shubkagel and Nitsch showed how basic principles of graphic design can be applied to the field of election administration to make forms and informative materials more user friendly and better able to elicit the information they're intended to obtain from voters.

Session 3: Voter Registration

Bryan Caskey briefed CEOs on current programs for voter registration list maintenance, including confirmation mailings, NCOA and the interstate crosscheck program.

Brad Bryant introduced John Lindback, former Oregon state election director who now works with the Pew Charitable Trusts' Center on the States. Lindback presented an overview of one of Pew's recent initiatives, called the Voter Registration Modernization Project. Pew had organized a Design Working Group in 2009 to study state voter databases and look for better ways to keep them current with minimal actions needed by the voters themselves. Pew's plan, to be published in a report this summer, is to establish an optional service states may subscribe to that will enable them to compare registration records against various other databases to track voters' address changes and other information. States could then contact voters to invite them to update their records so they will always be current before elections and to eliminate the "hump" of voter registration activity that usually occurs before elections.

Session 4: Voting

This session was devoted to two voting initiatives that are new in 2010: the MOVE Act and mobile polling.

Brad Bryant explained to CEOs the state's plan for compliance with the MOVE Act, which requires state and county election officers to provide all voting information and ballots to overseas voters by email or other electronic means upon request of the voters. (See article elsewhere in this newsletter.) A 2008 law passed by the Kansas Legislature goes into effect in 2010 and allows counties the option of sending mobile election boards to nursing homes, assisted living facilities and hospital based long term care facilities. The purposes of the law are twofold: (1) to make voting easier for this group that often has difficulty obtaining information about the elections and in getting to the polls to vote, and (2) to reduce opportunities for fraud, voter intimidation and coercion that sometimes are reported to occur at these facilities.

Ellen Klem, an attorney with the American Bar Association's Commission on Law and Aging, traveled from Washington, DC to make a presentation on voting by persons with cognitive impairments, dementia and other conditions that make voting difficult. Klem emphasized that such voters do not lose their voting rights because of their impairments and explained the need for states to adopt procedures to guarantee these rights, as Kansas has done with passage of the mobile polling law. Klem also described basic procedures for assisting cognitively impaired voters without making their voting decisions for them, voting for them or forcing them to vote.

The KCCEOA invited retired county clerks to attend the conference, and a number of them accepted the invitation. Everyone enjoyed renewing acquaintances and catching up on the retirees' activities. Former Secretary of State Ron Thornburgh attended the Thursday night banquet, made brief remarks and posed for pictures.

During the Friday morning business session, new KCCEOA officers were sworn in. The SOS office wishes to recognize Jefferson County Clerk Linda Buttron for her service as KCCEOA President during the past year and to commend all the Association's officers for a successful conference.

SOS HAVA Coordinator Resigns

Craig Bourne, HAVA Coordinator in the SOS elections division since April 2006, resigned in March 2010 to become Deputy Election Commissioner in Shawnee County. Election Commissioner Elizabeth Ensley hired Craig to fill the vacancy created when long-time deputy commissioner Norine Staab retired in late 2009.

Craig had worked in the SOS office's Human Resources department as a part-time college student since May 2004. He moved across the hall to assume the HAVA duties upon the resignation of Brian Henson, who had served in the position for more than two years.

Craig had recently taken on extra duties as 2010 Census Adjustment Project Coordinator. The census adjustment is a once-a-decade project assigned to the SOS by statute to comply with the state constitutional mandate that federal census population data be adjusted to count college students and military personnel at their permanent residences.

Much of the initial work of implementing HAVA was completed in the years 2003-2007, and recently the HAVA Coordinator position was not devoted full-time to HAVA duties, although the ongoing programs associated with HAVA still require continuous work by a number of SOS personnel. The reduction in time spent on HAVA allowed Craig to take on the census adjustment project.

Craig's position was filled by Josh King. Josh had worked as a part-time college student in the SOS computer office for more than five years, since October of 2005. While in the computer office, Josh worked on the User Acceptance Testing (UAT) program for the deployment of voting equipment under HAVA. He visited a number of counties testing equipment and assisting the counties in their acceptance procedures.

We are fortunate that Craig did not leave the elections business entirely and that we can still contact him when we need to. We wish him well in his new duties in the Shawnee County election office. We are also pleased that we were able to find an able replacement in Josh King. Congratulations, Craig, and welcome aboard, Josh!

Constitution Party Lawsuit

On April 28, 2010, the Constitution Party filed a lawsuit against the Secretary of State's Office. Many election officers will remember the Constitution Party from several years ago. In 1998, a group of individuals circulated a successful petition that created the Taxpayers Party. In 2000, the party requested a name change to the Constitution Party. In 2002, the Constitution Party failed to nominate any candidates for office and ceased to be a recognized political party in Kansas.

The lawsuit contains two allegations. One, the Constitution Party is not recognized by the state of Kansas. Because of this, supporters and members of the Constitution Party cannot proclaim their party affiliation while registering to vote. As a result, the state cannot provide voter information to the Constitution Party as it is provided to recognized political parties. This limits the ability of the Constitution Party to track and communicate with supporters. Therefore, the Constitution Party wants the court to order the state to track members of their party (and presumably other parties as well).

The second point of the lawsuit is that current Kansas law bars non-Kansas residents from circulating petitions within the state. This requirement violates the Constitution Party's first amendment right to appoint their own spokesman, their right to freedom of association, and the right to hire non-resident petition circulators if they so choose.

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The current Kansas law on petition circulators was changed several years ago as a result of a U.S. Supreme Court case governing petitions. The U.S. Supreme Court decision did not expressly address this situation.

Our office is working with the Attorney General's office to address this lawsuit. We will share any information that may arise out of this lawsuit. At this time, no court date has been set. In addition, no changes in office policies or procedures have been made.

Prepare Now for the Primary Election

The state primary election is scheduled for August 3, 2010, and it is time for election officials to begin preparing. The top of the ballot this year features one U.S. Senate race (Sen. Sam Brownback's seat), all four U.S. House of Representatives seats, and all the statewide offices—Governor/Lieutenant Governor, Secretary of State, Attorney General, State Treasurer and Commissioner of Insurance.

The first major event in the election season is the candidate filing deadline at noon on June 10. Shortly thereafter, county election officers are faced with the deadline to begin mailing absentee ballots to overseas voters who apply for

2010 Elections Legislation Report

Due to political factors in the Kansas Legislature, very little legislation passed in 2010 in the areas of elections, ethics and campaign finance. The Senate passed a number of bills, but after receiving hearings in the House committee they were not brought to the floor for debate. This was true of all the bills proposed by the Secretary of State and the KCCEOA.

One bill proposed by the Kansas County Officials Association met with more success—Senate Bill 494 passed as part of a conference committee on House Bill 2039. Senate Bill 494 clarified the circumstances under which the county clerk acts as sheriff in cases where the sheriff and undersheriff positions are both vacant. This bill was worked by the committees on local government rather than the elections committees, which, in the current climate of the Legislature, increased its chances for passage.

Other legislation that all CEOs must take note of are Senate Concurrent Resolutions that create statewide votes on constitutional amendments. As a result of the 2009 and 2010 legislative sessions, there will be two constitutional amendments on the ballot in November, 2010.

- Senate Concurrent Resolution 1611—This resolution passed in 2009. It provides a constitutional guarantee of the right to bear arms for defense self, family, home and state.
- Senate Concurrent Resolution 1622—This resolution also passed in 2010. It removes the power granted to the Legislature by the Kansas Constitution to pass laws restricting the right to vote of people with mental illnesses.

The SOS office will provide more information to CEOs regarding these resolutions, including the text of the resolutions and Spanish translations for those counties required to provide bilingual voting materials. Also, according to K.S.A. 64-103, the SOS publishes notices of the constitutional amendment elections statewide three times before the election, so CEOs are not required to add these questions to their regular publications.

Sherrie Riebel, Allen County Clerk and chair of the KCCEOA Election Committee, conducted a number of committee meetings to organize the Association's legislative agenda. Sherrie and various members of the committee went to Topeka on several occasions to testify on their bills. The committee and conferees did what they could to promote their bills, but other factors intervened to keep them from passing this year.

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\$0.44 outgoing postage and \$0.74 return postage.

A call to the U.S. Postal Service regional office in Topeka verified that this is correct. If a CEO uses the SOS permit, they have the option of also paying an annual \$585 accounting fee, which will get a lower rate of approximately \$0.53 (\$0.44 + \$0.083). If a county does not pay the accounting fee, they will be charged the \$1.18 postage rate for each mail piece that is returned.

This means that small counties should estimate how many official election mailings they will make each year to assess whether it is better to pay the \$585 accounting fee or to pay the higher per-piece rate. One advantage of the business reply permit is that the county pays return postage only on those pieces that are returned. The option of applying a first-class postage stamp to each piece of mail might be less expensive for some counties, even though the postage would be wasted for those mailings that are not returned by the voters.

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ballots under the federal Uniformed and Overseas Citizen Absentee Voting Act. Some overseas voters are expected to request to have their ballots emailed to them under the 2009 Military and Overseas Voter Empowerment (MOVE) Act. The deadline to begin distributing UOCAVA ballots is 45 days before the election, which this year is Saturday, June 19.

Although some CEOs in Kansas have emailed ballots on a limited, case-by-case basis the past two elections, under MOVE all voting materials and information, including voter registration applications, must be made available electronically if UOCAVA voters request it. Also, they must be provided the opportunity to track their ballots online as part of MOVE. This all must be in place for the November general election, but if possible the Secretary of State's intention is to implement it for the primary election. The reason for this is so the same procedures are used throughout the election year.

The MOVE Act allows states to shorten the effective period of the Federal Post Card Application, which is the document used by UOCAVA voters to apply for ballots. The HAVA law had made the FPCA effective for all elections from the date the voter submitted the FPCA through the second succeeding November election. This proved to be wasteful and needlessly expensive because overseas voters, especially military voters, frequently change addresses and many ballots were being returned as undeliverable. The Secretary of State's office proposed legislation in 2010 to shorten the effective period of the FPCA to one calendar year, but the bill did not pass. Therefore, at least for the 2010 election, county election officers in Kansas will be required to continue to observe the extended period, sending ballots to all UOCAVA voters who submitted FPCAs before the 2008 election and any time since.

Another new initiative for 2010 is mobile polling. A 2008 law authorizes each county election officer to send mobile election boards to nursing homes, assisted living centers and hospital-based long term care facilities with permission of the management at each site. Procedures for mobile polling were developed by a task force appointed in 2007 by former Secretary of State Ron Thornburgh. SOS staff members discussed the program and distributed a guide to CEOs at the KCCEOA conference on May 6. Also, an expert on voting by the elderly and cognitively impaired voters, Ellen Klem of the American Bar Association's Commission on Law and Aging, gave an overview at KCCEOA. A number of CEOs have expressed their intention to conduct mobile polling in 2010.

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Another law that has been expanded as an option for each counties is the satellite advance voting law. Before the 2008 election, only counties with more than 250,000 population (Johnson and Sedgwick) were authorized to conduct satellite advance voting. The law was changed before the 2008 election to allow this option to all counties. Some experimented with it in 2008, and more counties have said they will implement it in 2010. Satellite advance voting increases the convenience for voters; without it, all in-person advance voting must be done in the county election office.

The Secretary of State's office plans to stay in close contact with all CEOs throughout the election season, mostly by email and telephone. CEOs are encouraged to watch for communications from the SOS office and to contact the office if they have questions.