



**OFFICE OF THE DISTRICT ATTORNEY  
EIGHTEENTH JUDICIAL DISTRICT**

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On October 3, 2019 the Office of the District Attorney, 18<sup>th</sup> Judicial District, received a complaint from a citizen alleging that in 2017, 2018 and 2019, the Mayor of the city of Wichita, Mayor Jeff Longwell, failed to accurately complete the Substantial Interest Form required in *Kansas Statutes Annotated 75-4301a et seq.*,

Two investigators employed by the Office of the District Attorney conducted various witness interviews and obtained documentation of expenditures related to the allegations set forth in the complaint. The Mayor cooperated fully in this investigation.

The District Attorney with the assistance of a Deputy District Attorney reviewed the results of the investigation, the applicable Kansas laws, relevant opinions issued by the Kansas Ethics Commission, Attorney General's Opinions and the available case law published by the appellate courts of Kansas. The allegations, the respective laws implicated by the allegations, the facts established by the investigation, the analysis of the same and the respective conclusions are set forth below.

## Allegations

In summary, the allegations raised concerning Mayor Longwell are as follows:

1. That Mayor Longwell played in a non-charity golf tournament in 2016, and Professional Engineering Consultants (P.E.C.) paid \$610.00 for him to do so. Mayor Longwell was alleged to have failed to file a “substantial interest” form as required by K.S.A. 754301a(a)(3) and K.S.A. 75-4302a(b)(5) in April of 2017.
2. That Mayor Longwell played in a golf tournament in 2017 with a \$1,000 entry fee paid for by unknown party. Mayor Longwell was alleged to have failed to file a “substantial interest” form as required by K.S.A. 75-4301a(a)(3) and K.S.A. 75-4302a(b)(5) in April of 2018.
3. That Mayor Longwell played in a golf tournament on October 22, 2018 with a \$1,000 entry fee paid for by Wildcat Construction. Mayor Longwell was alleged to have failed to file a “substantial interest” form as required by K.S.A. 75-4301a(a)(3) and K.S.A. 754302a(b)(5) in April of 2019.
4. In June of 2019, Mayor Longwell filed a substantial interest report as a candidate for mayor. The report did not include reference to the alleged substantial interest he received from Wildcat Construction on October 22, 2018 for the \$1,000.00 paid for the golf tournament.

The ultimate issue before the Office of the District Attorney is whether the Mayor received “goods or services” that should have been reflected in his Substantial Interest Form filings covering the years 2016, 2017 and 2018.

## Kansas Statutes

*Kansas Statutes Annotated* 12-10a06, defines the powers and duties of a city mayor.

Kansas statutes contain the “State Governmental Ethics” in Chapter 46, Article 2, which provides ethics rules for state officer holders: Governor, Lt. Governor, legislators, et cetera. The statutes applicable to state office holders set out specific restrictions on compensation that can be received, prohibitions on solicitations for gifts or economic opportunities, and limitations on hospitality, services or gifts that can be accepted.

Conversely, local office holders (ex: mayors, members of a city council or township board) are not subject to these statutes. Instead, Chapter 75, Article 43 defines various terms related to the receipt of compensation by the local office holder, or candidate for local office and defines the requirement for the filing of a “substantial interests” form when in receipt of the same. State law sets forth no specific restrictions on what a local office holder or candidate can receive as “goods or services” nor is this term defined.

*Kansas Statutes Annotated* 75-4301a, Governmental ethics applicable to local governmental subdivisions; definitions. As used in K.S.A. [75-4302a](#), [75-4303a](#), [75-4304](#), [754305](#) and [75-4306](#), and amendments thereto:

(a) “Substantial interest” means any of the following:

...

(3) If an individual or an individual's spouse, either individually or collectively, has received in the preceding 12 months, without reasonable and valuable consideration, *goods or services having an aggregate value of \$500 or more from a business or combination of businesses, the individual has a substantial interest in that business or combination of businesses.* (Emphasis added.)

*Kansas Statutes Annotated* 75-4302a. Same; statement of substantial interests; individuals required to file; filing; rules and regulations; sample forms; disclosure if individual or spouse is officer of nonprofit corporation exempt from federal income taxes.

(a) The statement of substantial interests shall include all substantial interests of the individual making the statement.

(b) Statements of substantial interests shall be filed by the following individuals at the times specified:

(1) By a candidate for local office who becomes a candidate on or before the filing deadline for the office, not later than 10 days after the filing deadline, unless before that time the candidacy is officially declined or rejected.

...

(5) By any individual holding an elective office of a governmental subdivision, between April 15 and April 30, inclusive, of any year if, during the preceding calendar year, any change occurred in the individual's substantial interests.

## Case Law

There are no opinions issued by the appellate courts of Kansas with reference to *Kansas Statutes Annotated* 75-4302a.

With respect to subsequent statutes found within Article 43, the Kansas Supreme Court addressed *Kansas Statutes Annotated* 75-4304 in *In re Hertach*, 279 Kan. 1218 (2005), an unrelated disciplinary proceeding against an attorney who hid his business relationship with the (then) Sheriff and Undersheriff of Reno County, as the business the three men created to bid on private jail expansion. Again, this decision offers no instruction to the instant investigation.

### “Goods or Services”: Statutes and Ethics Opinions

Chapter 75 does not define the term “good or services” received by local office holders as referenced in *Kansas Statutes Annotated* 75-4302a(a)(3).

Various definitions of goods or services are found in other, collateral areas of Kansas law. *Kansas Statutes Annotated* 75-6402 addresses the Kansas prompt payment act, which states,

[U]nless the context clearly requires otherwise, the following words and phrases shall have the meanings respectively ascribed thereto.

...

(d) “Goods” means any goods, supplies, materials, equipment or other personal property, but does not mean any real property.

(e) “Services” means any contractual services including architectural, engineering, medical, financial, consulting or other professional services, any construction services and any other personal services, but does not mean any services performed as an officer or employee of any government agency. Services shall not include construction contracts subject to K.S.A. 16-1901 through 16-1908, and amendments thereto.

In the Kansas Uniform Consumer Credit Code, the terms are defined as follows at Administrative regulation, 16a-1-301, General definitions:

In addition to definitions appearing in subsequent articles, in K.S.A. 16a-1-101 through 16a-9-102, and amendments thereto:

(24) "Goods" includes goods not in existence at the time the transaction is entered into and merchandise certificates, but excludes money, chattel paper, documents of title, and instruments.

(43) "Services" includes (a) work, labor, and other personal services, (b) privileges with respect to transportation, hotel and restaurant accommodations, education, entertainment, recreation, physical culture, hospital accommodations, funerals, cemetery accommodations, and the like, and (c) insurance.

Additionally, *Kansas Statutes Annotated* 79-3602 (nn) states that "service" means those services described in and taxed under the provisions of *Kansas Statutes Annotated* 79-3603, the retailers sales tax, which reads as follows:

For the privilege of engaging in the business of selling tangible personal property at retail in this state or rendering or furnishing any of the services taxable under this act, there is hereby levied and there shall be collected and paid a tax at the rate of 6.15%, and commencing July 1, 2015, at the rate of 6.5%. Within a redevelopment district established pursuant to K.S.A. 74-8921, and amendments thereto, there is hereby levied and there shall be collected and paid an additional tax at the rate of 2% until the earlier of the date the bonds issued to finance or refinance the redevelopment project have been paid in full or the final scheduled maturity of the first series of bonds issued to finance any part of the project upon:

(a) The gross receipts received from the sale of tangible personal property at retail within this state;

...

(d) the gross receipts from the sale of meals or drinks furnished at any private club, drinking establishment, catered event, restaurant, eating house, dining car, hotel, drugstore or other place where meals or drinks are regularly sold to the public;

(e) the gross receipts from the sale of admissions to any place providing amusement, entertainment or recreation services including admissions to state, county, district and local fairs, but such tax shall not be levied and collected upon the gross receipts received from sales of admissions to any cultural and historical event which occurs triennially;

...

(m) the gross receipts received from fees and charges by public and private clubs, drinking establishments, organizations and businesses for participation in sports, games and other recreational activities, but such tax shall not be levied and collected upon the gross receipts received from: (1) Fees and charges by any political subdivision, by any organization exempt from property taxation pursuant to K.S.A. 79-201 *Ninth*, and amendments thereto, or by any youth recreation organization exclusively providing services to persons 18 years of age or younger which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986, for participation in sports, games and other recreational activities; and (2) entry fees and charges for participation in a special event or tournament sanctioned by a national sporting association to which spectators are charged an admission which is taxable pursuant to subsection (e);

(n) the gross receipts received from dues charged by public and private clubs, drinking establishments, organizations and businesses, payment of which entitles a member to the use of facilities for recreation or entertainment, but such tax shall not be levied and collected upon the gross receipts received from: (1) Dues charged by any organization exempt from property taxation pursuant to K.S.A. 79-201 *Eighth* and *Ninth*, and amendments thereto; and (2) sales of memberships in a nonprofit organization which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986, and whose purpose is to support the operation of a nonprofit zoo;

In addition to these instructive definitions of “goods” and “services” when there is an absence of statutory definition or interpretive case law, advisory ethics opinions issued by the Kansas Ethics Commission provide guidance when interpreting ethics rules for public officials. See generally Kansas Administrative Regulations, 19-1-1(a).

In Opinion No. 1991-8, the Kansas Ethics Commission (then, the Kansas Public Disclosure Commission) was asked whether a lobbyist could purchase \$20.00 tickets to a theater performance and give them to individual members of the Kansas Legislature. In this situation, \$7.00 of the \$20.00 tickets represented the actual cost of each ticket with the remaining \$13.00 going to a specific charity. The published opinion of the Kansas State Ethics Commission reached the following conclusion:

The general rule is that the value of a gift is the fair market value of the goods or services if the recipient were to go out and purchase it him or herself. As we understand this precise factual situation, all the recipient is receiving is the value of the ticket and that value of \$7.00 is therefore the value of the gift.

In Opinion No. 1991-23, the Kansas Ethics Commission was asked by the President of the Topeka Country Club to review its prior decision concerning gift of membership to state officers and employees to determine whether such a gift is prohibited. The opinion quoted §(b) *Kansas Statutes Annotated* 46-237 and held,

The threshold question is whether the value of the membership is \$100 [the threshold in 1991] or more in any calendar year. For the purposes of making that determination, we would advise you that the value of the membership should be considered to be the going fair market value that would be charged in the ordinary course of business for the same rights and privileges of membership.

In Opinion No. 1993-14, a state senator sought an ethics opinion as to whether it is legally permissible to raise money through a charitable golf tournament and the reporting implications of such an act. The published responding opinion of the Kansas State Ethics Commission states:

[W]e have reviewed both the conflict of interest laws, K.S.A. 46-215 et seq., and the campaign finance act, K.S.A. 25-4101 et seq., and neither law requires any reporting so long as all proceeds are turned over to charitable organizations.

Given the failure of *Kansas Statutes Annotated* 75-4301a to define “good or services,” the Mayor explained to an investigator with the Office of the District Attorney that he did not believe a round of golf constituted “goods or services.” He further explained that charitable golf outings where the entire expenditure went to charity (situations where the golf course donated their greens fees to the charity) led him to the conclusion that, because the charity received the entire donation, the golfers (including him) derived no financial benefit. As such, he did not believe it necessary to report these outings on his substantial interest form

*Kansas Statutes Annotated 75-4301, et seq.*, is silent as to the definition of “goods or services.” That said, other statutes support the conclusion that the State of Kansas defines entertainment, such as a golf outing, as “goods or services.” Adding further credence to this conclusion, the ethics opinions above hold that the benefit of these types of services to a (state) office holder is to be assessed based on the fair market value of the service provided.

With respect to the narrower question as to whether an office holder must report the goods or services derived from a company having paid for a round in a charitable golf tournament, where all proceeds went to the charity, the guidance from the ethics opinions listed above is split.

### **Attorney General’s Opinions**

Opinions issued by the Kansas Attorney General may also provide guidance in the absence of case law or explicit statutory direction.

*Kansas Statutes Annotated 75-4304* was analyzed in Kansas Attorney General Opinion 82-144. The opinion offered the following commentary regarding the intent of the Chapter 75, Article 43, Public Officers and Employees:

[I]t was determined that the act is intended to prohibit self-dealing, i.e., it precludes a public officer or employee, acting in that capacity, from making or participating in the making of a contract with a business in which he or she has a substantial interest. (Quote from Attorney General’s Opinion 74-269.)

Several more AG’s Opinions have referenced these statutes but again, only in the context of the collateral question as to whether an employee of one unit of government can serve on a governing commission or board (Opinions No. 75-64; No. 79-12; No. 80-10; No. 84-7; No. 8641; 91-15); and whether a public employee holding one position may simultaneously hold

another position in the private sector (No. 96-23, re a full-time county appraiser holding parttime employment).

### Corporations

The relative roles of three businesses and their relationship to one another is relevant to the subsequent analysis of the applicable statutes, ethics opinions and facts.

Professional Engineering Consultants (P.E.C.) is a self-described “full service” engineering firm in Wichita, Kansas.

Wildcat Construction is a commercial construction company in Wichita, Kansas owned by Sherwood Construction.

“Wichita Water Partners” is a joint venture between *Burns and McDonnell* engineering firm of Kansas City, Missouri and *Alberici*, a construction firm from St. Louis, Missouri. In its bid regarding the City of Wichita’s water treatment plant, Wichita Water Partners intends to utilize local businesses, including P.E.C. and Wildcat Construction to complete the project.

What constitutes a “combination of businesses” under *Kansas Statutes Annotated* 754301a(a)(3), is not defined. A definition of the phrase is found at Kansas Administrative Regulations 19-41-1, which applies to State Office holders: “‘*Combination of businesses*’ means any two or more businesses owned or controlled directly by the same interests.”

Wichita Water Partners is not owned or controlled by P.E.C. or Wildcat Construction / Sherwood Construction, nor does Wichita Water Partners own or directly control Wildcat Construction/ Sherwood Construction or P.E.C. Conversely, because Wildcat Construction is owned by Sherwood Construction, Wildcat Construction and Sherwood Construction would constitute a “combination of businesses.”

## Facts

Given the definitions discussed above, the investigation revealed the following “goods or services” were received by Mayor Longwell by year, as follows.

### 2016

#### a. Workforce Alliance Golf Tournament

The complaint alleged that Mayor Longwell played as part of a foursome in a charity golf tournament in Wichita to benefit Workforce Alliance in 2016 and that the entry fee was paid for by P.E.C. The director of Workforce Alliance confirmed that in 2016, P.E.C. did sponsor a foursome but Mayor Longwell was not included in that group. Mayor Longwell’s recently-sold company, Ad Astra Printing, paid for a separate foursome to play in the tournament, which included Mayor Longwell. There is no indication that the course donated their normal greens fees to the charity. Fair market value of the round of golf paid for by Ad Astra was under \$50.00.

#### b. Guthrie, Oklahoma Golf trip, June 2016

On June 30, 2016, Mayor Longwell traveled to Cimarron National Golf Club in Guthrie, Oklahoma to golf with the President of P.E.C. and two other individuals—an outing paid for by P.E.C.

The receipts provided by P.E.C. during the investigation reflect two rounds of golf played on June 30, 2016. The cost for the first round of golf & cart fees, split four ways was \$40.91. The course offers reduced fees for a second round of golf and cart fees: \$23.91 per golfer. The Mayor received a \$12.25 hat before the first round and \$12.75 for lunch at the course. An evening meal at Gage’s Steakhouse was expensed for \$27.95 to the Mayor. P.E.C. rented a car from Enterprise Rental to transport the 4 golfers to and from Guthrie. The Mayor’s portion of

the rental car was \$55.69. The Mayor shared a room at the Sleep Inn in Guthrie with one of the other golfers. His portion of the hotel room was \$35.00.

As set forth above, the total goods or services received by the Mayor for the 2016 golf outing to Cimarron National Golf Course in Guthrie, Oklahoma was \$208.46.

c. Rolling Hills Country Club – in 2016

P.E.C. pays for a corporate membership to Rolling Hills Country Club. Guests of the company who golfed during the week on the company's account were charged \$50 per round.

In 2016, Mayor Longwell golfed 4 separate times at Rolling Hills Country Club (March, May, September and November) on P.E.C.'s corporate membership, a total benefit of \$200.00. In addition, P.E.C. expensed approximately \$60.20 for cart fees (\$15.00 per round) and \$52.67 for food.

The total benefit to Mayor Longwell for these 4 golf outings is \$312.87.

d. Dinner with Wildcat Construction

In April of 2016, the Mayor joined the president of Wildcat Construction with their spouses/significant others for dinner paid for by Wildcat Construction. The Longwell's dinners totaled \$47.03.

e. **Total in 2016**

The total good or services provided by P.E.C. to Mayor Longwell in 2016 was **\$521.33**.

The total goods or services provided by Wildcat Construction to Mayor Longwell in 2016 was **\$47.03**.

2017

a. Guthrie, Oklahoma Golf trip, 2017

In June of 2017, Mayor Longwell traveled to Cimarron National Golf Club in Guthrie, Oklahoma to golf with the President of P.E.C. and two other individuals—an outing paid for by P.E.C.

The cost for rounds of golf & the first cart fee, split four ways was \$56.11. The cart fees for the second round of golf was \$8.61. Snacks at the golf course between rounds expensed to the Mayor, \$12.75. The Mayor's evening meal at Stables Café was \$9.95. P.E.C. rented a car from Enterprise Rental to transport the 4 golfers to and from Guthrie, \$58.62. The Mayor shared a room at the Holiday Inn Express in Guthrie with one of the other golfers, \$55.93.

The total goods or services received by the Mayor for the 2017 golf outing to Cimarron National Golf Course in Guthrie, Oklahoma was \$201.97.

b. First Tee Pro-Am Golf Tournament

In August of 2017, Mayor Longwell played in a charity Pro-Am golf tournament at Flint Hills National Golf Course with a \$1,000 entry fee paid for by Wildcat Construction. Additionally, the Executive Director of First Tee explained that the first year participants were given a bag tag (\$4.15 value) and a sleeve of golf balls (\$12.80 value).

Because this was a charitable golf tournament with all fees going to support the First Tee charity including the \$95.00 greens fees, Ethics Opinions 1991-8 and 1993-14 may be read to support the conclusion that, when the entire expenditure goes to the charity, there is no value to be reported. Conversely, the statutory definitions of good or services found outside of Chapter 75 suggest entertainment does qualify as “goods or services.”

At most, the total good or services received by the Mayor for the 2017 Pro-Am Golf Tournament for the tournament at Flint Hills National paid for by Wildcat Construction was \$111.95. There is a colorable argument that the only reportable “goods or services” given to the Mayor was \$16.95 for the bag tag and sleeve of golf balls.

c. Workforce Alliance Golf Tournament

The director of Workforce Alliance confirmed that in 2017, P.E.C. did not sponsor a foursome in this tournament. Mayor Longwell played in the tournament on the Ad Astra Printing team. There is no indication that the course donated their normal greens fees to the charity. Fair market value of the round of golf was under \$50.00.

d. Sherwood Construction

Sherwood Construction, the parent company of Wildcat Construction, paid for 1 (non-charitable) golf outing at Wichita Country Club in June of 2017. Cart fees were \$21.50 and the greens fees were \$64.50. The total goods or services received by the Mayor was \$86.00.

e. **Total in 2017**

The total goods or services provided by P.E.C. to Mayor Longwell in 2017 was **\$201.97**. The total goods or services provided to Mayor Longwell from Wildcat Construction and Sherwood Construction was either **\$102.95** or **\$197.95**.

Kansas statutes offer no guidance as to whether or under what circumstances Wildcat Construction/Sherwood Construction and P.E.C. would constitute a “combination of businesses” as a result of their affiliation with Wichita Water Partners. No ethics opinions address the issue with respect to local officer holders. As set forth above, Kansas Administrative Regulations 1941-1, which applies to state office holders does offer the following definition: “*Combination*

*of businesses' means any two or more businesses owned or controlled directly by the same interests.”* While Wildcat Construction/ Sherwood Construction and P.E.C. have a joint interest in the success of Wichita Water Partners, they are not directly controlled by, nor do they directly control Wichita Water Partners.

## 2018

### a. Workforce Alliance Golf Tournament

Mayor Longwell played as part of a foursome in a charity golf tournament at Hidden Lake's Golf Course in Wichita to benefit Workforce Alliance in April of 2018. P.E.C. paid a total of \$610, including the fees necessary for Mayor Longwell to play in this tournament. There is no indication the course donated their greens fees to Workforce Alliance.

Receipts show that \$250 of the \$610 was for a “hole sponsorship” paid by P.E.C. which allowed P.E.C. to place a sign with their corporate logo and name at one hole on the course the day of the tournament. The remaining \$360 was the cost for the four golfers to participate in the tournament.

The “goods or services” received by Mayor Longwell would be based on the fair market value of the service. In this case, a round of golf at Hidden Lake's Golf Course was \$49.00. Total benefit to the Mayor attributable to P.E.C. for his participation in this tournament was \$49.00.

### b. Guthrie, Oklahoma Golf trip

In August of 2018, Mayor Longwell traveled to Cimarron National Golf Club in Guthrie, Oklahoma to golf with the President of P.E.C. and two other individuals—an outing paid for by P.E.C.

The cost for the first round of golf & cart fees, split four ways was \$47.46. The Mayor received a \$3.25 drink at Braums; a \$12.50 lunch at the golf course; and a \$9.95 evening meal. A second round of golf and cart fees, split four ways was \$57.21. Lunch for the Mayor the second day was \$10.75. P.E.C. rented a car from Enterprise Rental to transport the 4 golfers to and from Guthrie. The Mayor's portion of the rental car was \$52.28. The Mayor shared a room at the Holiday Inn Express in Guthrie with one of the other golfers. His portion of the hotel room was \$55.93.

The total goods or services received by the Mayor for the 2018 golf outing to Cimarron National Golf Course in Guthrie, Oklahoma was \$249.33.

c. Greystone Steak and Seafood

On October 18, 2018, the Mayor and his wife joined the President of P.E.C. and his spouse as well as the President of Wildcat Construction and his then fiancé for dinner at Greystone Steak and Seafood. The President of P.E.C. paid for the meal with his private credit card, did not expense the meal to P.E.C. and was not reimbursed by P.E.C. All three men described this is a social gathering and not work-related.

*Kansas Statutes Annotated 75-4301a, et seq.*, is silent as to when a dinner paid for by a friend crosses the line into a "substantial interest." If a state office holder were on the receiving end of such a meal, administrative regulations do offer the following guidance, at Kansas Administrative Regulations 19-40-3a, concerning gifts:

(a) "Bona fide personal or business entertaining or gifts" means entertainment or gifts provided to state officers or employees or their spouses which are based solely on a business or personal relationship totally unrelated to the state officer or employee's duties as such. The following factors, among others, will be taken into consideration in determining whether a specific entertainment or gift falls within this definition:

(1) The intent of the parties;

- (2) The length of time a business or personal relationship has existed;
- (3) The topics of discussion;
- (4) The setting;
- (5) The persons attending;
- (6) Whether the person providing the entertainment or gift is reimbursed by an organization by which they are employed; and
- (7) Whether the person providing the entertainment or gift, or his or her principal, deducts or could deduct the expenditures as a business expense.

In the present situation, the parties aver that the meal was a social occasion only. The president of P.E.C. and Mayor Longwell have known one another for approximately 9 years. The setting was a public restaurant attended by each man's spouse. The president of P.E.C. paid for the meal personally, not with a company card. He did not "expense" the \$75.00 he spent on the Mayor and the Mayor's wife to the company or seek reimbursement from the company. While no analogous statutes apply to local officers, under the more explicit rules to which state office holders must proscribe their conduct, the meal would qualify as a personal or business relationship, not as reportable "goods or services."

d. First Tee Pro-Am Golf Tournament

Mayor Longwell again played in the Pro-Am golf tournament to benefit the First Tee charity. The tournament was held on October 22, 2018 at Flint Hills National Golf Course with a \$1,000 entry fee paid for by Wildcat Construction. The Executive Director of First Tee explained that the second year participants were given a bag tag (\$4.55 value) and a golf hat (\$10.51 value). Again, because this was a charitable golf tournament with all fees going to support the First Tee charity including the \$95.00 greens fees, Ethics Opinions 1991-8 and 1993-14 may be read to support the conclusion that, when an entire expenditure goes to the charity, there is no value to be reported. Conversely, the statutory definitions of good or services found outside of Chapter 75 suggest entertainment does qualify as "goods or services."

At most, the total good or services received by the Mayor for the 2018 Pro-Am Golf Tournament for the tournament at Flint Hills National paid for by Wildcat Construction was \$111.95. There is a colorable argument that the only reportable “goods or services” given to the Mayor was \$15.06 for the bag tag and golf hat.

e. Rolling Hills Country Club – in 2018

P.E.C. pays for a corporate membership to Rolling Hills Country Club. Guests of the company who golf during the week on the company’s account were charged \$50.00 per round.

In 2018, Mayor Longwell golfed 2 times at Rolling Hills Country Club on P.E.C.’s corporate membership (June and August); a total of \$100.00. In addition, P.E.C. “expensed” \$30.10 for cart fees (\$15.05 per round) and \$16.99 for food in August.

The total benefit to Mayor Longwell for these golf outings is \$147.09.

f. Sherwood Construction - Golf

In September of 2018, the Mayor played golf at a three-day tournament at Wichita Country Club paid for by Sherwood Construction. Due to conflicts in his schedule, the Mayor was able to play 12 holes the first day, 9 holes the second day and 18 holes the third day. Total goods or services, \$172.00.

**g. Total in 2018**

The total goods or services provided by P.E.C. to Mayor Longwell in 2018 was **\$445.42**.

The total provided by Wildcat Construction and Sherwood Construction to Mayor Longwell was either **\$187.06** or **\$282.06**.

As discussed above, Kansas statutes offer no guidance as to whether or under what circumstances Wildcat Construction/Sherwood Construction and P.E.C. would constitute a

“combination of businesses” as a result of their affiliation with Wichita Water Partners. The definition set forth at Kansas Administrative Regulations 19-41-1, which applies to State Office holders does offer the following definition: “‘*Combination of businesses*’ means any two or more businesses owned or controlled directly by the same interests” does not support the conclusion that Wildcat Construction and P.E.C. are a combination of businesses.

### Analysis

In Kansas, state statutes limit and inform the financial interactions which state office holders have with members of the public. See Chapter 46, Act 2. The same is not true with respect to local office holders. Chapter 75 requires the disclosure in substantial interest forms of certain interactions. Unfortunately, many operative words and phrases are not defined.

The law is clear that, as a local officer holder, *Kansas Statutes Annotated 75-4301a et seq.*, a mayor is to file a Substantial Interest form when the mayor “has received in the preceding 12 months, without reasonable and valuable consideration, *goods or services* (emphasis added) having an aggregate value of \$500 or more from a business or combination of businesses, the individual has a substantial interest in that business or combination of businesses.” What constitutes “goods or services,” and what relationship establishes a “combination of businesses” are both left undefined with respect to local office holders.

Following a thorough factual investigation and lengthy analysis of all relevant statutes, administrative regulations, opinions of the Kansas Ethics Commission and Attorney General’s Opinions, I conclude that in 2016, Mayor Longwell received \$521.33 in “goods or services” from P.E.C., \$21.33 over the \$500.00 statutory threshold without reporting the same in the following year’s substantial interest form. I acknowledge the Mayor’s explanation that he did

not believe golf outings were “goods or services,” but my conclusion is consistent with the definition of “goods or services” endorsed by the State of Kansas in other areas of law.

The Mayor filed his Substantial Interest Form in 2017 for goods or services received in 2016 but incorrectly submitted it to the Kansas Secretary of State. For local office holders, Campaign Finance forms are filed with the Secretary of State, while Substantial Interest forms are filed with the local County Election Commissioner. The Mayor was not required to submit Substantial Interest form in 2018 as he did not receive “goods or services” over the \$500.00 threshold from any one business or combination of businesses during the respective reporting periods. He did file the form in 2019 because he sought re-election.

The failure to accurately report a substantial interest form may be charged as a class B misdemeanor under *Kansas Statutes Annotated* 75-4306. If a State office holder made the same mistake, he or she *could* receive a fine from the Kansas Ethics Commission—though rather than issuing a fine, the Commission normally requests the officer holder file a corrected form.

### **Conclusion**

Based on his assessment of *Kansas Statutes Annotated* 75-4301a, *et seq*, the Mayor did not believe the golf outings paid for by P.E.C. in 2016 were required to be included in a Substantial Interest Form filing. I have concluded that Kansas law does consider the outings reportable “goods or services.” And while I am confident, having exhaustively researched the issue, that, as an act of entertainment, golf qualifies as “goods or services” under Kansas law, it is also true that *Kansas Statutes Annotated* 75-4301a, *et seq.*, governing Substantial Interest Form filings, offers little guidance. I am not filing a class B misdemeanor under these facts. I

ask the Mayor to file a correction to his 2017 Substantial Interest Form reflecting the expenditures attributable to P.E.C. in 2016 set forth above.

A handwritten signature in black ink, appearing to read "Marc Bennett". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Marc Bennett  
District Attorney