

KENTUCKY POLITICAL REPORT



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Kentucky carpenter's union fined \$297,000 by FEC

The Federal Election Commission entered into a conciliation agreement in late September with the former Kentucky State District Council of Carpenters and three of its former leaders for multiple violations of the Federal Election Campaign Act between 1998-2002 that resulted in a \$297,000 civil penalty — the sixth-largest in FEC history.

The 21-page agreement signed by union officials outlines the FEC's investigation into KSDCC's activities during the 1998, 2000, and 2002 election cycles as a result of a complaint brought by the Kentucky Attorney General's office in the spring of 2001.

The FEC's investigation found probable cause that Steve Barger, Tom Shulz and Don Mitchell, among others, bundled campaign contributions, directed KSDCC field representatives to directly work for candidates endorsed by the union, and coerced union workers into making contributions to the endorsed campaigns, each violations of the FECA.

Although Barger, the former union head, Shulz, the former general counsel, and Mitchell, the former political director, signed the FEC's conciliation agreement and authorized payment of the fine, they did not formally admit guilt and claimed they did not intend to violate federal law. All three men, as well as the KSDCC, were represented by Frankfort attorney Bill Johnson.

The KSDCC's actions in this case took place prior to enactment of the Bipartisan Campaign Reform Act of 2002, or the so-called McCain-Feingold bill, and therefore fell under the authority of the FECA.

The now-defunct KSDCC, a labor organization that represented approximately 4,000 carpenters, millwrights and other trades persons in Kentucky, was dissolved in March of this year and merged into the carpenter's union in Indiana, now called the Indiana-Kentucky Regional Council of Carpenters.

The KSDCC was affiliated with the United Brotherhood of

Carpenters and Joiners of America, its international union, and until 1999, was a member of the AFL-CIO.

Specifically, the FEC investigation determined that Barger assigned union field representatives each election year to work with federal, state and local candidates endorsed by the union. Some field reps worked for a single candidate and others worked for multiple candidates.

In 1998, for example, union field reps assisted the campaigns of Tom Barlow (1st CD), Chris Gorman (3rd CD), Ken Lucas (4th CD), Ernesto Scorsone (6th CD), and Scotty Baesler, who ran for a U.S. Senate seat that year.

In short, union employees were not reimbursed for time they spent working for the campaigns.

The field reps assigned to these campaigns acted as union contacts and participated in public rallies and door-to-door campaigning as well as volunteer recruitment. While the union representatives also communicated campaign activities directly to its membership, which is allowed by law, they also engaged in activities directed to the public, including press conferences, phone banks and appearances in television advertisements.

In fact, during the 2000 election cycle, two union field reps had their own desks in the campaign offices of Brian Roy, who ran against U.S. Rep. Ed Whitfield in the 1st CD, and Eleanor Jordan, who ran against U.S. Rep. Anne Northup in the 3rd CD.

Further, the investigation found that Barger wrote letters to candidates endorsed by the KSDCC informing them that union reps would work directly in their campaign offices and assist their campaigns. According to the FEC, the KSDCC provided approximately \$141,000 in salaries for union employees working with endorsed candidates in the 10 weeks preceding the general elections in 1998, 2000 and 2002.

According to federal law, union employees cannot be paid for the time they spend working on federal campaigns where the work involves communications or activities directed to the public, or activities not limited to union membership educa-

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tion. In short, union employees were not reimbursed for time they spent working for the campaigns; their man hours constituted in-kind contributions that exceeded federal limits.

The FEC investigation also discovered KSDCC officials "solicited and monitored" contributions from its employees to the campaigns of endorsed candidates. According to the FEC, Don Mitchell identified which campaigns employees should give to, how much they should contribute and imposed a deadline for those contributions.

In 2002, for example, Mitchell directed union workers to make contributions to the campaigns of Klint Alexander (1st CD), Jack Conway (3rd CD), Lois Combs Weinberg (U.S. Senate) and Ken Lucas (4th CD). KSDCC officials collected and forwarded the contributions from 15 field reps to each candidate's primary and general election campaigns for a total of \$12,950.

As soon as the employee contributions were received, union officials would draft letters on union stationery to the endorsed candidates listing the names of the contributors and the total amount given, thus facilitating and serving as a conduit for earmarked contributions to federal candidates, a violation of federal law.

In its report, the FEC also refers to "state" candidates on at least five separate occasions, raising the possibility that KSDCC employees engaged in similar activities with candidates for the state House and Senate as well as those running for city offices around the state.

Officials with the Kentucky Registry of Election Finance, the state agency that governs campaign fundraising and finances for state and local candidates, said they were unaware of the case until they read about it in the Nov. 10 issue of *The Kentucky Gazette*.

For more information, go to www.fec.gov, click on "Enforcement Matters," and then search the closed "MURs." This case is number 5268.

Constitutional amendment banning same-sex marriage highlights urban-rural divide

Kentucky voters approved a constitutional amendment banning same-sex marriage by a wide margin Nov. 2, with 74.6 percent of votes cast in favor of the amendment. The amendment, in fact, passed in every one of Kentucky's 120 counties by an average of 83 percent.

A review of the county vote totals indicates that same-sex marriage is a non-partisan issue; in staunchly Democratic Floyd County, for example, 86.6 percent of voters approved the amendment. Rather, vote totals showed an urban-rural divide; in general, the higher a county's population, the lower the support for the amendment.

Voters in Fayette and Jefferson counties, for example, showed the lowest support for the amendment, with 57.1 and 60.2 percent support, respectively. And in the conservative but highly populated Kenton, Boone and Campbell counties, 65 percent of voters approved the amendment. Counties with universities also showed lower support for the amendment, as did Franklin County, the seat of state government, which ranked third-lowest in support of the amendment with 62.4 percent.

The amendment received its highest support among rural counties in Eastern, Western and Southern Kentucky, as the chart below shows.

Support in selected Kentucky counties for the constitutional amendment banning same-sex marriage approved Nov. 2

10 counties with *strongest* support for the amendment with the number and percentage of votes

County	Yes	Percentage	No	Percentage
1. Magoffin	4,515	93.80%	299	6.20%
2. Clinton	3,808	93.40%	270	6.60%
3. Monroe	4,147	91.60%	381	8.40%
4. Harlan	9,204	91.30%	875	8.70%
5. Carlisle	2,202	91.10%	216	8.90%
6. Jackson	4,349	91.00%	432	9.00%
7. Leslie	3,915	91.00%	385	9.00%
8. Knox	10,064	90.60%	1,043	9.40%
9. Clay	5,389	90.50%	566	9.50%
10. Morgan	3,875	90.50%	409	9.50%

10 counties with *weakest* support for the amendment with the number and percentage of votes

County	Yes	Percentage	No	Percentage
1. Fayette	68,310	57.10%	51,258	42.90%
2. Jefferson	186,716	60.20%	123,671	39.80%
3. Franklin	14,314	62.40%	8,614	37.60%
4. Kenton	39,437	65.00%	21,229	35.00%
5. Campbell	24,286	65.40%	12,876	34.60%
6. Woodford	6,731	66.30%	3,416	33.70%
7. Oldham	17,753	68.70%	8,077	31.30%
8. Rowan	5,452	70.00%	2,342	30.00%
9. Madison	20,154	71.40%	8,070	28.60%
10. Scott	11,247	71.60%	4,452	28.40%

Source: Kentucky Secretary of State

Senate leadership shake-up: Sanders gives up A&R for caucus post; Stine new pro-tem

It won't be official until a vote is taken during the four-day Organizational Session that begins Jan. 4, but at a meeting of the Senate Republican Caucus this afternoon, according to a reliable source, the 22-member caucus agreed on its leadership for the 2005-2006 cycle. David Williams will remain president

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and Dan Kelley will remain majority floor leader, but the other three slots will have new faces. Katie Stine will replace Dick Roeding as president pro tem; Richard Sanders will replace Charlie Borders as caucus chair; and Dan Seum will replace Elizabeth Tori as whip.

No member of leadership serves as chair of a standing committee. So, Sanders will be giving up his chairmanship of the Senate A&R Committee. It's not firm yet, but Charlie Borders is likely to take the reins of A&R. Seum will be relinquishing his chairmanship of the Committee on Veterans, Military Affairs & Public Protection.

In the House, no one has surfaced to contest Speaker Jody Richards, as far as we can tell. A race is developing, however, for the speaker pro tem slot; John Will Stacy will challenge Larry Clark, sources say. Rocky Adkins is expected to be re-elected majority floor leader. But Jim Callahan's retirement leaves the caucus chair open, and names mentioned as candidates for that post are Royce Adams, John Arnold, Bob Damron, Joni Jenkins and Brent Yonts. We're not hearing any names against Joe Barrows, as majority whip, at this point.

Pre-filed bills introduced by incumbents who lost Nov. 2 to meet same fate as sponsor

By law, all pre-filed bills are introduced in the General Assembly during the first day of the legislative session. But at least four bills that have been pre-filed for the 2005 session may never be introduced. Why? The sponsors of the bills were defeated in the Nov. 2 General Election. This leaves the bills without a sponsor — which is required before a bill can be introduced.

Therefore, according to an LRC official, if an incumbent is defeated, the bills they have pre-filed will not be introduced, unless the bill already has a co-sponsor or another legislator is willing to sponsor the bill. On Nov. 2, five House incumbents, all of them Democrats, were defeated. Between them, they had pre-filed four bills without co-sponsors.

These include BR 193, sponsored by Rep. Charles Geveden, which would exempt the electricity used in poultry farms and grain drying from the sales and use tax; BR 6 and BR 135, sponsored by Reps. Dottie Sims and Roger Thomas, similar bills that would propose a constitutional amendment requiring the General Assembly to stay in session until a budget bill is passed; and BR 49, filed by Thomas, that would require insurers to promptly refund unearned insurance premiums.

Calendar set for 2005 session of Legislature

The 2005 session of the state Legislature, which will welcome 18 new members, will convene Jan. 4 to begin a 30-day session. Part I, from Jan. 4-7, will mostly be devoted to organization, though members can introduce bills.

During the organizational session, new members will be ceremonially sworn in; then, members will elect their leadership,

who will then appoint committee chairmen and assignments.

The Legislature will then recess for three weeks, returning Feb. 1 for Part II. Feb. 7 is the last day for bill requests, and Feb. 14 is the last day to introduce new bills. Also, the Legislature will not meet Feb. 21 in observance of President's Day. The Legislature will recess on March 18, then return March 21 for a two-day veto session. The Legislature will adjourn sine die March 22.

Gov. Fletcher reshuffles top personnel: Cave in, Groves out; Handley, Ramsey reassigned

As his first year in office comes to a close, Gov. Ernie Fletcher reshuffled his staff following the General Election. Fletcher's former chief of staff, Daniel Groves, will fill the newly created role of senior advisor. Replacing him as chief of staff is Stan Cave, a Lexington attorney who was a state representative from 1993-2000.

Former Executive Cabinet Secretary Allyson Handley has moved to the newly created position of policy adviser to both Fletcher and Tom Layzell, president of the Council for Postsecondary Education, on matters related to life sciences and new technology. Handley's replacement has not been named.

Also, former Personnel Cabinet Secretary Robert Ramsey was replaced by Erwin Roberts, who previously served as director of the state Office of Homeland Security. Ramsey will be re-assigned to an as-yet undetermined position. Keith Hall, who formerly served as assistant for boards and commissions, was named to fill Roberts' vacancy as Homeland Security director. Halls' replacement has not been named.

Staff Changes instituted by Gov. Ernie Fletcher

Name	Former position	New position
Stan Cave	Private attorney	Chief of Staff
Daniel Groves	Chief of Staff	Senior advisor
Allyson Handley	Executive Cabinet Secretary	Policy Adviser
Erwin Roberts	Homeland Security Director	Secretary of Personnel
Keith Hall	Director of Boards and Commissions	Homeland Security Director
Bob Ramsey	Secretary of Personnel	Undetermined

Current vacancies:

Secretary of the Executive Cabinet
Director of Boards and Commissions

Kentucky Notes & Quotes

Court ruling in budget lawsuit likely before General Assembly convenes for '05 session

A decision is expected before the end of the year in the lawsuit brought by the state Attorney General that challenges the authority of the governor to spend state funds in the absence of a legislatively enacted budget. The case has been submitted to Franklin Circuit Judge Roger Crittenden for a decision. In a recent meeting with lawyers involved in the case, Crittenden said he expects to rule before the General Assembly convenes for its 30-day session in Jan. 4. The case arose when the 2004 General Assembly, locked in disagreement over a tax reform plan proposed by Gov. Ernie Fletcher, adjourned sine die without passing a budget. To keep state services running, Fletcher issued an executive spending plan; Attorney General Greg Stumbo filed suit, asking the court to address the constitutional dilemma created.

State Democrats assemble search committee to find new chairman; report likely Jan. 15

The Kentucky Democratic Party's State Central Executive Committee established a search committee Nov. 13 to find a new chairman following Bill Garmer's resignation last week. Party vice-chair Terry Morgan of Bowling Green was installed as interim Party chair. Members of the committee include Bill Ryan, representing at-large delegates; state Sen. Joey Pendleton, representing the 1st CD; Chad Aull, representing the 2nd CD; Leonard Gray, representing the 3rd CD; Milly Diehl, representing the 4th CD; Roy Sizemore, representing the 5th CD; Fred Johnson, representing the 6th CD; House Speaker Jody Richards, representing the House caucus; Senate Minority Leader Ed Worley, representing the Senate caucus; and state Auditor Crit Luallen, Treasurer Jonathan Miller and Attorney General Greg Stumbo. The committee is expected to report to the State Central Executive Committee Jan. 15.

McConnell elected again as Majority Whip

U.S. Sen. Mitch McConnell was re-elected by Senate Republicans Nov. 18 to serve another two-year term as Majority Whip, a position he has held for two years. As Whip, McConnell is the second ranking Republican in the U.S. Senate, behind only Tennessee Republican and Majority Leader Bill Frist. The first session of the 109th Congress officially convenes Jan. 4, 2005.

Lawsuit filed to challenge constitutionality of Kentucky's gay marriage amendment

Three Kentuckians, with the backing of the Kentucky Fairness Alliance, filed a lawsuit Nov. 16 challenging the constitutional amendment banning same-sex marriage approved by voters Nov. 2. The lawsuit argues the amendment violates the state Constitution by including two subjects — gay marriage and civil unions — in the same amendment question and asks the court to void the election results. The Louisiana Court of

Appeals recently issued a ruling that voided the results of a constitutional amendment banning gay marriage approved by voters there on grounds similar to the Kentucky suit. A lawsuit is also underway in Georgia challenging the constitutionality of a similar amendment approved by voters there.

Justice-elect Will Scott to be honored Nov. 20

A party celebrating Will T. Scott's victory Nov. 2 in the race for the 7th District Supreme Court seat in Eastern Kentucky will be held Nov. 20 at 6:30 p.m. at the Grayson Conference Center in Grayson. Scott, a Pikeville lawyer who last served as a circuit judge in 1988, beat Justice Janet Stumbo by 2,122 votes out of a total 159,180 cast, or 50.7% to 49.3%. In 1993, Stumbo became the first woman ever elected to the Kentucky Supreme Court without first having been appointed. She was re-elected to a full, eight-year term in 1996. Scott has also been a candidate for state attorney general and U.S. Congress.

Gov. Fletcher discusses his top aide's move, a state energy policy and education reform

On the Nov. 13 broadcast of WKYT-TV's "Kentucky Newsmakers" with host Bill Bryant, Gov. Ernie Fletcher shared his thoughts on chief aide Daniel Groves, prospects for a budget agreement and passage of his tax reform proposal, and improvements in education. On Groves' new position as senior advisor, Fletcher said "...The position he took is the position that Mike Duncan had at the very beginning...That allows him to step back and to look at strategy, certainly the policy, that we want to utilize to make sure that we have the political strategies that are necessary to get the agenda done..." Fletcher told Bryant he is confident about passing a budget and a tax modernization plan during the 2005 legislative session. Fletcher said "I'm convinced now that we are going to get a budget, and we are going to get a tax plan." On education, Fletcher said "It's important that we continue to rekindle the fire in education reform in this state.. When you look at out of 100 students who enter the 9th grade only 15 graduate from a four-year college degree or university here in Kentucky." Bryant mentioned that Kentucky is one of 11 states without an energy policy, and Fletcher responded, "...We put together a working Task Force on Energy Policy. Considering the fact that we have the lowest cost of energy in the nation, that we have some of the most abundant natural resources, we are in an age of clean coal technology where we can create low-cost energy in an environmentally sound way. It's critical that we have an energy policy... We've already put together some basic ideas... They will have that back to me sometime in December and we'll be able to present what legislative changes we need to the Legislature as they come in the first of the year."

Birthdays

Sat., Nov. 20, **Sen. David Boswell**, 55 . . . Sun., Nov. 21, **Rep. Dwight Butler**, 41 . . . Sun., 28, **Sen. Dick Roeding**, 74.