

23 March 2015

Opinion¹: Campaign Materials

Issue/question:

1. Does the language in Title 5, Chapter 5, Section 501 "placing of legislation into proper form" include changes to the title of a bill?

2. Do the limits placed on the Secretary of State to change legislation (Title 5, Chapter 5, Section 501) apply to edits made before the bill packet has been assembled?

The answer to the first question is a qualified yes. The answer to the second is that the limits do not apply, but it is unclear whether this actually increases or reduces the Secretary of State's discretion. Overall, there are sufficient checks and balances to allow editing both during the assembly of the bill packet and after passage and signing. Because the answers to the questions are closely linked, I will address them together.

Title 5, Section 501. A. of the Statutes includes that:

"Subject to legislative approval, the Secretary of State shall have the power to correct the language of every piece of enrolled legislation that has been signed by the Governor, provided that such corrections shall not change the substance or spirit of the legislation, or the intent of the Legislature. The power of correction shall be limited to corrections of spelling, grammar, punctuation, and the placing of legislation into proper form."

This applies only to bills once they have passed both the House and the Senate. Indeed, in the actual Oklahoma legislature, enrolled legislation is that which has already passed both chambers and is presented to the Governor. (See: <http://www.okhouse.gov/Information/CourseOfBills.aspx>) Thus, these limitations apply to the edits made by an OIL Secretary of State after the bill has been passed by both chambers and signed by the Governor. Now, however, we must address (1) the extent of the changes that can be made, and (2) what edits can be made before the bill packet has been assembled.

The section quoted above clearly is intended to limit the possible extent of a Secretary of State's edits. This might lead one to interpret "the placing of legislation into proper form" as *not* including making edits to the title of a bill. *However*, I think such changes could be appropriate given the checks and balances already built into the rest of the section. For example, Title 5, Section 501.B. states:

"Each Secretary of State shall maintain a complete record of any and all changes made to enrolled legislation by his or her authorization and power. Such record shall at a minimum include a copy of the unedited enrolled legislation and a copy of the legislation as edited by the Secretary of State. The Secretary of State shall cause a copy of this record to be transmitted to the Speaker of the House of Representatives and the President Pro Tempore of the Senate before the commencement of each legislative session."²

¹ The authority to issue opinions is granted in Title 5, Chapter 4, Section 400 of the OIL Statutes.

² It should be noted here that because it would be impossible for the Secretary of State to transmit a copy of edits before the session the bill is considered, this responsibility to transmit should be seen as requiring the transmission of such edits before the following session. (For example, edits made to bills in the spring session must be disseminated to the parties before the start of the subsequent fall session.)

As an additional check, Title 5, Section 501.C. implies that the Legislature may reject the Secretary of State's corrections and that the Supreme Court may overturn the corrections. In addition, Title 5, Section 502.A. states that the Secretary of State shall disseminate all legislation that passed and became law to the members of the Steering Committee and member institution; this ensures transparency as it would allow members to discover if a Secretary of State had made unreasonable and/or abusive edits³ to their legislation. If a Secretary of State refused to disseminate the bills and make the corrections available as required by the Statutes, he/she could be subject to impeachment under Title 1, Section 100. Thus, there are multiple safeguards against the abuse of power by a Secretary of State.

Hopefully no legislation would require any significant edits to the title (or elsewhere) by the time it reaches the Secretary of State. However, because a slight chance nevertheless exists, I consider it prudent to interpret the Secretary of State's power in this area broadly, trusting in the existing checks and balances available to the legislative chambers and the court to prevent or reprimand abuses as necessary.

Now to the matter of whether this editing power applies to the assembling of the bill packet. The Statutes do not provide any specific power to edit. Indeed, Section 505 states:

“The Secretary of State shall distribute all proposed legislation for each session of the Legislature. This provision, however, shall not prohibit the Legislature, or either of its Houses from doing so in addition to, or exclusive of the Secretary of State.”

The word “distribute” in itself does not imply a right to make changes to the proposed legislation. This is a case where the exact wording of the organization's governing documents and practice may diverge. OIL Secretaries of State have traditionally made edits for formatting and such in order to ensure a cohesive, functional bill packet. I believe such edits are useful, and indeed likely necessary to an enjoyable session, but they are not explicitly provided for in the Statutes. (However, they are not explicitly banned.)

In the short term, it would be best for the Secretary of State to engage in an amount of editing consistent with past precedent; after all, if this is abused, the chambers can distribute legislation apart from the Secretary of State (Title 5, Section 505.A.), something which modern technology would make relatively easy as chamber leadership could solicit legislation directly from delegation chairs. In short, the punishment for abuse could be irrelevance. *In the long-term, though, the organization would benefit from Internal legislation to clarify whether the Secretary of State (and his/her designees) can edit legislation during the assembly of the bill packet and, if so, to what extent.*

³ I do not mean to propose here a list or litmus test for what constitutes an abusive correction. This matter should be left to the legislature and the courts to decide if and when they deem it necessary.