

FILE

Subject

State officers
Treasurer

Copy to



STATE OF KANSAS

Office of the Attorney General

State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

VERN MILLER

Attorney General

February 6, 1974

Opinion No. 74- 37

John L. Bingham
Legal Advisor to the Governor
Office of the Governor
State Capitol
Topeka, Kansas 66612

Dear Mr. Bingham:

You inquire whether "the procedure outlined in Section 6, Article 1 of the Kansas Constitution [may] be utilized to reorganize the office of state treasurer and provide for the appointment of a state treasurer."

As you point out, the state treasurer was formerly a constitutional office of the executive department of government. However, since the amendment of Article 1 of the Kansas Constitution as approved by the voters in November, 1972, the office exists today solely as a creature of statute. K.S.A. 75-601 et seq. K.S.A. 25-101 provides for election of that officer.

Article 1, § 6 states in pertinent part thus:

"(a) For the purpose of transferring, abolishing, consolidating or coordinating the whole or any part of any state agency, or the functions thereof, within the executive branch of state government, when the governor considers the same necessary for efficient administration, he may issue one or more executive reorganization orders. . . . Agencies and functions of the legislative and judicial branches, and constitutionally delegated functions of state officers and state boards shall be exempt from executive reorganization orders."

Although no longer a constitutional officer, the state treasurer continues as an officer of the executive department of the government; statutory responsibilities of the office are functions of neither the legislative nor judicial branches. Thus, the

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office is one subject to an executive order issued under Article 1, § 6. As stated in Van Sickle v. Shanahan, 212 Kan. 426 at 448 (1973):

"Section 6 is self-executing, and, simply stated, it authorizes executive initiation of reorganization orders to abolish, transfer, or revise the whole or any part of existing executive agencies or functions effective July 1, subject to legislative veto within the time prescribed. The procedure is an innovation which is based upon the theory that reorganization of the executive department is first and foremost a responsibility of the governor, which should be sustained on a continuing basis. Thus, the plan reverses the usual legislative procedure in which legislative enactments are subject to executive veto. The clear intent is to facilitate executive reorganization desired by the chief executive."

The responsibilities of the state treasurer are not constitutionally delegated, but, like the office itself, are purely statutory.

You inquire, further, whether an executive order reorganizing that office may provide for appointment of the treasurer, or person succeeding to the duties of that position, by the governor, rather than selection of the treasurer by popular election. Article 1, § 6 authorizes executive orders for the "purpose of transferring, abolishing, consolidating or coordinating the whole or any part of any state agency . . . within the executive branch of state government." In this instance, such an executive order would necessarily amend K.S.A. 25-101, to delete therefrom reference to election of the state treasurer. The power to abolish or reorganize an agency necessarily implies, in our view, the power to alter the method of selection of an agency head, and to provide for gubernatorial appointment in lieu of election as presently required by statute.

In response to your final inquiry, it is our view that the foregoing applies similarly to the office of state auditor, for the reasons stated above.

Yours very truly,


VERN MILLER
Attorney General

VM:JRM:jsm