

FILE

Subject State Provisions
Legislature 1974
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Expenditures



STATE OF KANSAS

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Attorney General

February 26, 1974

Opinion No. 74- 69

Honorable Kenneth J. Winters
Chairman
Federal & State Affairs Committee
House of Representatives
State Capitol
Topeka, Kansas 66612

Dear Representative Winters:

You inquire, first, whether the Kansas Legislature may "constitutionally restrict the amount of money a candidate may personally spend in a campaign, assuming the money is his personally." In my opinion, it is unquestionably within the constitutional power of the Legislature to impose such restrictions. Many cases so hold. In State of Wisconsin ex rel. La Follette v. Kohler, 228 N.W. 895, 69 A.L.R. 348 (Wis. 1930), the court discussed this question, and canvassed many of the decisions then reported on the subject. The court stated in part as follows:

"The power of the legislature in this field is admittedly very broad. It is not limited to the enactment of laws which merely amplify or enlarge the offenses of corruption, bribery, coercion, intimidation, and misconduct as those terms were defined at common law. It is within the power of the legislature to prescribe what constitutes a reasonable disbursement and what are proper methods of disbursement It is conceded in the briefs, and we think quite advisedly, that there can be no constitutional objection to the exercise of such power with respect to all officers other than the so-called constitutional officers"

The court went on to hold the act in question likewise applicable to constitutional officers, rejecting the argument that the regulatory act operated to impose by statute qualifications for

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election to constitutional offices. Given the recognized power of the Legislature to regulate disbursements for political campaigns for election to public office, such restrictions may clearly be applied to all such disbursements, whether from the candidate's personal funds or from funds derived from contributors.

Secondly, you inquire whether "the Kansas Legislature [may] constitutionally restrict the amount of money an individual desires to contribute to a campaign or campaign committee. One of the best statements of the permissible legislative considerations supporting such restrictions is that by the court in Kohler, supra:

"What public interest is or may be served by such a restriction? It is a matter of common knowledge that men of limited financial resources aspire to public office. It is equally well known that successful candidacy often requires them to put themselves under obligation to those who contribute financial support. If such a candidate is successful, these obligations may be carried over so that they color and sometimes control official action. The evident purpose of the act is to free the candidate from the temptation to accept support on such terms and to place candidates during this period upon a basis of equality so far as their personal ambitions are concerned, permitting them, however, to make an appeal on behalf of the principles for which they stand, so that such support as may be voluntarily be tendered to the candidacy of a person will be a support of principles rather than a personal claim upon the candidate's consideration should he be elected."

Although limitations upon individual contributions were not at issue in that case, the statements by the court are equally applicable.

The constitutional basis for restricting the amount of money a candidate may spend in a campaign and the amounts of individual contributions to candidacies for public office is simply the police power, which has long been exercised by the Legislature in the field of elections. For example, the corrupt practices act found at K.S.A. 25-1701 et seq. was enacted in 1893. When and as abuse, or the potential for abuse, is found in other aspects of campaigns for public office, the Legislature is free to extend its regulatory power so far as may be reasonable and necessary. We express no opinion regarding the reasonableness of the restrictions found in sections 18, 19 and 20. As the court stated in Kohler,

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"If the amount which may be expended by a candidate for purposes designated as proper by the statute is so small as to prevent a proper appeal to the electorate, the remedy lies with the legislature and is in the field of political, not judicial, action. The balancing of detriments and benefits is for the legislature, not for the courts."

Yours very truly,



VERN MILLER
Attorney General

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