



STATE OF KANSAS

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CURT T. SCHNEIDER
Attorney General

January 21, 1975

Opinion No. 75-11

Mr. James H. DeCoursey, Director
Department of Economic Development
1st Floor - State Office Building
Topeka, Kansas 66612

Dear Mr. DeCoursey:

Prior to amendment by ch. 349, L. 1974, K.S.A. 74-5006(a) provides thus in pertinent part:

"There is hereby created a commission which shall be known as the 'Kansas economic development commission' which shall be composed of ten (10) members, consisting of the lieutenant governor and nine (9) members to be appointed by the governor and confirmed by the senate." [Emphasis supplied.]

This provision was amended by the cited 1974 enactment to remove the lieutenant governor from membership on the commission. As amended, the section appears as above, with the underscored language stricken therefrom. The amendment was effective "on and after January 13, 1975, and its publication in the statute book." The amendment did not abolish the commission existing on January 13, 1975, and create a new commission in its stead K.S.A. 77-201 states in pertinent part thus:

"In the construction of the statutes of this state the following rules shall be observed, unless such construction would be inconsistent with the manifest intent of the legislature or repugnant to the contest of the statute:

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First. . . . The provisions of any statute, so far as they are the same as those of any prior statute, shall be construed as a continuation of such provisions, and not as a new enactment."

In view of 1974 amendments to subsection (c), however, questions have been raised whether the membership of the Commission existing on January 13, 1975, is affected thereby. This subsection as amended states thus in pertinent part:

"Initial appointments of members of the commission appointed by the governor shall be made as follows: Three (3) of the members shall be appointed for a term of two (2) years each, three (3) shall be appointed for a term of three (3) years each, and the remaining three (3) shall be appointed for a term of four (4) years each; and upon expiration of their term their successors shall each be appointed for a term of four (4) years. In case of a vacancy in the office of any member, a successor shall be appointed in like manner as that provided for the appointment of the member creating the vacancy for the remainder of the unexpired term. The members of the commission appointed by the governor shall be nonpartisan and shall be appointed without reference to their part affiliation except that not more than five (5) members shall be members of the same political party."
[Emphasis supplied.]

The underscored language was added by the 1974 amendment. You advise that as of January 13, 1975, seven members of the Commission were of one political party.

The question is raised, thus, whether the membership of the commission became illegally constituted as of January 13, 1975, by virtue of that fact, or whether the statutory political balance on this statutorily nonpartisan body is to be achieved only through appointments of new members made subsequent to January 13, 1975, as vacancies arise due to expiration of the terms of present members, resignation, or otherwise.

If the direction that "not more than five (5) members shall be members of the same political party" is deemed to apply not only to appointments made on and after January 13, 1975, but to members theretofore appointed, the amendment operates to terminate the terms of two members of the commission as it is presently constituted. The amendment provides no means of identifying which two of the seven are affected. Obviously, given voluntary agreement by two of the seven to resign, the statutory political balance may be achieved forthwith. Lacking that, however, and assuming all of the seven are equally insistent in completing the terms to which they were originally appointed, there appears to be no statutory or other legally prescribed means of identifying which two of the seven are as of January 13, 1975, no longer members of the commission.

In Johnson v. Warren, 192 Kan. 310, 387 P.2d 213 (1963), the court stated the general rule thus:

"The general rule, however, is that a statute operates only in the future from its effective date; that it has no retrospective effect unless its language clearly indicates that the legislature so intended, and that retrospective application is not to be given where vested rights will be impaired." 192 Kan. at 314.

The question here is not strictly one of retrospective application, but rather, the scope of prospective application. If the amendment is deemed to apply to the existing membership as of January 13, 1975, the effect of the construction is to terminate the terms of two members, otherwise unidentified and unidentifiable, prior to the expiration of the terms for which they were appointed.

In our view, both the more practical and the more legally sound construction to put upon this amendment is that it applies to all appointments made subsequent to January 13, 1975. The amendment was inserted in a subsection which deals specifically with the appointment of members of the commission, and should be applied, in our view, to prescribe a consideration, i.e., a balance of political affiliation of members of the commission, to be applied to appointments made subsequent to the effective date of the amendment.

Accordingly, it is our judgment that the 1974 amendment, requiring that persons appointed by the governor to the commission shall be such that not more than five members of the commission shall be members of the same political party, applies only to appointments

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made subsequent to the effective date of the amendment, and does not affect the legality of the membership of the commission as it is presently constituted.

Yours very truly,

A handwritten signature in cursive script, appearing to read "Curt T. Schneider".

CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj