



STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

February 18, 1975

Opinion No. 75- 74

Ms. Margaret Jordan
Johnson County, District Attorney
Johnson County Courthouse
Olathe, Kansas 66061

Dear Ms. Jordan:

K.S.A. 25-903 provides in pertinent part thus:

"It shall be unlawful for any candidate for nomination or for the election to any city, school district, community junior college, township or county office to expend, or directly or indirectly cause to be expended upon any primary, general or special election, or to contract or to incur obligations in connection with any such election in excess of ten per centum (10%) of the salary for the first year of the office to which such candidate is seeking nomination or election, except as otherwise provided in this section. . . . Any candidate for an office which pays a salary of less than one thousand dollars (\$1,000) per annum may lawfully expend not to exceed five hundred dollars (\$500) for primary or general election expenses."

You inquire as to what limitation, if any, is applicable to a candidate for an office which pays no salary, such as e.g., a position on the board of education of a unified school district. Of the offices to which the statute applies, city, county, township, school district, and community junior college, the offices of the last three groups pay no compensation. The

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limitation of the first sentence quoted above is expressed in terms of a percentage, ten percent, "of the salary for the first year of the office" The limitation is expressed in terms which assume a salary for the office. If no salary is authorized, alternative inferences may be drawn, first, that no moneys may be expended, ten percent of zero being zero, and secondly, that there is no limitation whatever, the limitation presuming, as a condition of its applicability, some salary upon which to compute the limitation. The second sentence quoted above imposes a limitation applicable to any "office which pays a salary of less than . . . \$1,000 per annum." Once again, it may be argued that this sentence is entirely inapplicable to any office which pays no salary, the payment of some salary whatever, in an amount less than \$1,000 per annum, being a condition describing the offices to which it applies.

Criminal penalties are prescribed by K.S.A. 25-905 for violation of K.S.A. 25-903. The latter statute must, therefore, give due notice of the conduct which is prohibited. Limitations therein are expressed in terms of a percentage of salary paid for the office sought. If no salary is authorized for an office, a candidate may well conclude that there is no limitation upon the expenditures he may make in seeking that office. It may reasonably be argued that a position on the board of education is not "an office which pays a salary of less than one thousand dollars (\$1,000) per annum," because it pays no salary at all, and that the payment of some salary, however modest, is a condition of applicability of this limitation. Concerning the first sentence, a candidate might equally well conclude that, ten percent of nothing being nothing, either that the limitation is zero dollars, or that there is no limit whatever on the expenditures.

In short, it may fairly be said that K.S.A. 25-903, insofar as expenditure limitations therein are framed in percentages of per annum salaries for the offices to which it applies, that no limitation is prescribed for offices for which no salary is paid, and we so conclude. It is a basic condition for the computation of any expenditure limitation that there be a salary for the office. If there is no salary prescribed for an office, a candidate therefor has no means by which to compute the expenditure limitation applicable to his election efforts. By definition, an office "which pays a salary of less than one thousand dollars" is an office which pays some salary, however slight, and an office which pays no salary is not, of course, an "office which pays a salary"

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In State v. Hill, 189 Kan. 403, 369 P.2d 365 (1962), the court stated thus:

"It is well recognized that in order to satisfy the constitutional requirements of due process, a state statute must be sufficiently explicit in its description of the acts, conduct or conditions required or forbidden, to prescribe the elements of the offense with reasonable certainty. The standards of certainty in a statute punishing for criminal offenses is higher than in those depending primarily upon civil sanctions for enforcement. The offenses must be defined with appropriate definiteness. There must be ascertainable standards of guilty, but impossible standards of specificity are not required. Men of common intelligence cannot be required to guess at the meaning of the statute. The vagueness may be for uncertainty with respect to persons within the scope of the statute or in regard to applicable tests to ascertain guilt. The test is whether the language conveys a sufficient definite warning as to the proscribed conduct when measured by common understanding and practice." 189 Kan. at 411.


We cannot but conclude that K.S.A. 25-903 cannot be construed to proscribe an expenditure limitation for any office for which no salary is authorized by law, and secondly, that were it so construed and sought to be so applied, it would be found constitutionally defective for failure to define with any explicitness the limitations which are applicable to such offices.

Secondly, you ask whether the expenditures of a committee for the election of a candidate are attributable to the candidate under K.S.A. 25-903. That section, as quoted above, makes it unlawful for a candidate "to expend, or directly or indirectly cause to be expended" amounts in excess of the prescribed limitations. [Emphasis supplied.] The relationships between candidates and committees formed to promote their candidacies may vary widely. In some instances, the committee may serve as no more than an extension

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of the candidate himself, whereas in others, the committee may act with a great deal of self-direction and autonomy. We cannot conclude categorically that expenditures made by a committee on behalf of a candidate are as a matter of law attributable to the candidate as expenditures made indirectly by him or her, as the case may be.

Yours very truly,



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