



STATE OF KANSAS

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CURT T. SCHNEIDER  
Attorney General

February 28, 1975

Opinion No. 75- 83

Honorable Robert Bennett  
Governor, State of Kansas  
The State Capitol Building  
Topeka, Kansas

Dear Governor Bennett:

You advise that it is alleged that for nearly fifty years, the Southwestern Bell Telephone Company has followed a practice of furnishing to each member of the Kansas Corporation Commission toll-free long distance telephone service. Mr. Stanley Clow, general manager for Southwestern Bell Telephone Company here in Topeka, advises that it is his belief and understanding that this practice has been one of long-standing, extending back several decades, although the year in which such service was first provided is uncertain. Mr. Saffels advises us that this practice has been confirmed by past members of the Commission whose service extends back to 1955. The practice you advise and we have confirmed, was terminated at the end of 1974, and prior to January 1, 1975, the effective date of the state governmental ethics act, K.S.A. 1974 Supp. 46-215, et seq.

We are advised that the service used by members of the Commission, except for James Wells, a recent appointee, pursuant to this practice during the calendar year 1974 totalled \$3,554.61, with an average service chargeable in the amount of \$98.74 utilized by each member. No allocation has been made of this amount as to service used by any individual commissioner for personal use or official use, there being no dispute but that the free service thus provided was regularly used for personal use as well as official purposes.

Additionally, in connection with the foregoing, you inquire concerning a trip made by members of the Commission to inspect manufacturing facilities of Southwestern Bell located in or near Phoenix, Arizona, and Denver, Colorado. After

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completing the visit to the Phoenix facility, and before proceeding to Denver, members of the Commission, accompanied by certain company officers and employees, travelled to Las Vegas for a stay of two nights. The expense of the transportation to Las Vegas, and the cost of lodging, dinner, and certain incidental expenses were borne by the company or its employees, as elaborated further in the accompanying investigative report.

You inquire, particularly, whether acceptance of the toll-free service and of transportation to Las Vegas, and accommodations there as guests of the company, constitute a violation of K.S.A. 66-145, which provides in full as follows:

"Any member of the corporation while acting in the performance of his official duties, together with such attorney for the commission, secretary, stenographers, accountant, expert or other agent whose services such commission may deem to be important in the discharge of their duties, shall have the right of passing at all times over all the roads and on all railroad trains or any part thereof in the state free of charge. It shall be unlawful for any commissioner, attorney for the commission, secretary, or employee of said commission to receive, or apply for, any free transportation, or reduced rates for transportation, from any railroad company or other common carrier, or agent, servant, or employees, for any other person, during the time of his office or employment.

"Each commissioner, attorney for the commission, secretary, stenographer and employee shall be entitled to receive from the state his actual necessary expenses while absent from the city of Topeka on official business, which amount shall be paid by the treasurer of state on the order of the state auditor, an itemized sworn statement thereof having been first filed with the secretary of the commission and approved by the commission. No member of said commission nor the attorney of said commission shall ask or receive from any person, firm or corporation any other pay or emolument of any kind for services herein, except the salaries provided by law." (emphasis supplied)

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The Board of Railroad Commissioners was created in 1883. Ch. 124, L. 188. The section quoted above was acted in 1905. Ch. 340, § 3, L. 1905. From the time of its organization, and until 1911 and the adoption of a comprehensive public utilities act, creating the Public Utilities Commission, the Board of Railroad Commissioners had regulatory authority only over railroads. The quoted provision, that is now found in K.S.A. 66-145, thus applied to members of the Board of Railroad Commissioners. Upon creation of the Public Utilities Commission in 1911, by virtue of Ch. 238, § 2, L. 1911,

"[a]ll laws relating to the powers, duties authority and jurisdiction of the Board of Railroad Commissioners of this state are hereby adopted, and all powers, duties, authority and jurisdiction by said laws imposed and conferred upon the said Board of Railroad Commissioners, relating to common carriers, are hereby imposed and conferred upon the commission created under the provisions of this act."

The last sentence of K.S.A. 65-145 states that no member of the Commission may ask or receive from any source "any other pay or emolument of any kind for services herein, except the salaries provided by law." [Emphasis supplied.] The sentence by its express terms applied, prior to 1911, to the Board of Railroad Commissioners, and it applies today to members of the Kansas Corporation Commission to prohibit the receipt of any pay or emolument for services rendered by them in the performance of those duties which passed to the Commission from that Board by operation of law. Those duties relate solely to its regulation of railroad common carriers. Thus, the statutory prohibition which prompts your question is entirely inapplicable to the Commission in its relationship with other carriers and utilities which became subject to its regulation by adoption of the 1911 public utilities act.

The members of the Commission have not, thus, acted in violation of K.S.A. 66-145, or any other provision of Ch. 66, K.S.A., governing members of the Commission in the exercise of their regulatory responsibilities. Art. 29, Ch. 21, K.S.A. prescribes certain conduct by public officers or employees which is deemed to affect the public trust. These sections enumerate offenses against the public trust to include acts of oppression, partiality, official misconduct, abuse of

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authority, the offer or acceptance of any benefit or reward or consideration to influence a public officer with respect to the performance of official duties or powers, and exaction of illegal fees. Our entire investigation has disclosed no basis whatever for any inference that the company furnished, or the commissioners accepted, either the credit card privilege, or the tour with the expectation or intent that the members of the Commission be influenced as a result of either the cards or the trip in the continued discharge of their official regulatory duties.

Yours very truly,

  
CURT T. SCHNEIDER  
Attorney General

CTS:en

cc: Dale E. Saffels  
cc: Vernon A. Stroberg  
cc: Jules V. Doty