STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

March 6, 1975

Opinion No. 75- 96

Mr. Douglas S. Wright
Assistant City Attorney
Municipal Building
215 East 7th Street
Topeka, Kansas 66603

Dear Mr. Wright:

You inquire concerning the constitutionality of K.S.A. 25-903, which provides in pertinent part thus:

> "It shall be unlawful for any candidate for nomination 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 percentum (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."

Prior to amendment in 1974, see ch. 158, L. 1974, the last sentence extended the limitation of five hundred dollars also to candidates for the office of state senator or state representative.

This statute as it existed prior to its amendment in 1974 was the basis for charges filed in the Shawnee County District Court in State v. Kern and State v. Love, case Nos. 28,355 and 28,356, respectively. The defendants argued that although the statute imposed a general expenditure limitation of ten percent of the salary for the first year of the office sought by the candidate, it provided special exceptions imposing limitations upon other candidates which bore no similar relation to the salary of the office sought, and that accordingly, the statute resulted in an unequal classification of candidates in violation of the equal protection clause of the Fourteenth Amendment. The court agreed, stating thus:

> "For convenience, candidates for nomination or election to offices paying salaries between $1,000 and $5,000 per year will be called the 'one to five group.' All candidates included within the broad general classification defined by the statute are allowed to spend at least $500 for election expenses except the one to five group. Candidates in the one to five group may only spend from $100 to $500 for election expenses, the exact amount depending upon the salary for the particular office . . . . Clearly the statute is not uniform and clearly neither under the evidence, nor upon any reasonable basis, could it be found there is some difference which would require the one to five group to be more limited as to election expenses than legislative candidates or candidates for offices paying salaries of less than $1,000 per year under a statutory scheme based upon the salary of the office sought by the candidate and generally on a progressive basis. The result is that the statute is arbitrary and does deny equal protection of the law to the one to five group."

In addition, the court directed its attention to K.S.A. 25-905, which provides in pertinent part thus:

> "Every person who shall violate any of the provisions of K.S.A. 25-903 or 25-904, as

> amended . . . shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not exceeding one thousand dollars ($1,000). The conviction of any person of a violation of any of the provisions of K.S.A. 25-903, as amended, shall at once vacate any office held by him, and such person shall be disqualified from holding any public office for a period of two (2) years: Provided, That the penalties and forfeitures herein imposed shall not apply to candidates for city of the third class or township offices." [Emphasis supplied.]

This provision, the court pointed out, "simply allows that class [of candidates for offices of township and cities of the third class] to violate a criminal law without penalty which is a denial of equal protection of the law guaranteed all other members of the group consisting of candidates for city, school district, community junior college, county and state offices."

Accordingly, the court held that

> "K.S.A. 1971 Supp. 25-903 violates the equal protection clause of the Fourteenth Amendment of the Constitution of the United States, Section 17 of Article 2 of the Constitution of the State of Kansas, and the first and second sections of the Kansas Bill of Rights and it is therefore unconstitutional and void."

Since this decision, filed January 31, 1973, the statute in question, K.S.A. 25-903, has not been amended in any material respect to correct the constitutional defects found by the court. There remains the same exemption of candidates for offices of cities of the third class and townships, which exemption, standing alone, the court held to deny equal protection of the law to all other candidates who were subject to its penalties. Similarly, there also persists the same disparate limitations upon expenditures by candidates, as to one class limited to ten percent of the salary of the first year of the office, and as to another, limited

to $500, a classification which the court found to be constitutionally insupportable. Based upon these grounds, and upon the decision of the court in State v. Love and State v. Kern, it is our opinion that the minor amendments to K.S.A. 25-904 since that decision do not alter the fundamental constitutional objections raised by the court, and that the statute continues to be unconstitutional and void under the equal protection clause of the Fourteenth Amendment to the United States Constitution.

Yours very truly,

Curt Schneider

CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj