



STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

CURT T. SCHNEIDER
Attorney General

March 5, 1975

Opinion No. 75- 101

Mr. Keith Sanborn
District Attorney
Sedgwick County Courthouse
525 North Main Street
Wichita, Kansas 67203

Dear Mr. Sanborn:

Thank you for your opinion draft of February 26, 1975, addressed to Mr. Byron Kenyon, concerning the application of the third sentence of K.S.A. 25-903 to expenditures made not only directly by the candidate, but also to expenditures made in his or her behalf, as, e.g., by the spouse of the candidate or by an independent political committee. In the draft opinion, you conclude that the limitation applies "to all expenditures made directly or indirectly on behalf of the candidate, including those made by his or her spouse and by political committees." On page 2, you conclude, similarly, that the limitation applies "to all expenditures made on his behalf," as well as his own personal expenditures.

As you point out, the first sentence of this section forbids a candidate "to expend, or directly or indirectly cause to be expended" sums greater than a prescribed percentage of the salary for the first year of office. The third sentence states only that a candidate "may not expend" more than \$500 for election to any office which pays a salary of less than \$1,000. Assuming there is implied in this third sentence the same relationship between the candidate and the expenditure which is discussed in the first sentence, i.e., either that the candidate makes the expenditure or directly or indirectly causes it to be made, this language does not necessarily include all expenditures made in his behalf. As you recognize on page 4, whether an expenditure

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made, e.g., by a political committee in behalf of a candidate may be said to have been made by him indirectly depends upon the particular factual circumstances involved, and primarily upon whether the committee is substantially self-directed and independent of the candidate. Given the hypothetical fact apparently posed by Mr. Kenyon, of an expenditure in behalf of a candidate by the candidate's spouse, without the knowledge or approval of the candidate, assuming the truth of the hypothesized facts, the candidate may not be said to have made the expenditure directly or have caused it to be made indirectly, and thus the expenditure would fall without the limitation imposed by the third sentence of K.S.A. 25-903.

On the last page of the draft, it is suggested concerning expenditures by an independent political committee, that if the candidate "has some control over the committee or some access to its financial records," the expenditures of the committee should be deemed attributable to the candidate for the purposes of K.S.A. 25-903. Certainly, if a candidate exercises measurable control over the committee, again depending upon the factual circumstances involved, the candidate may reasonably be deemed to have caused such expenditures to have been made indirectly, and if so, he is accountable for them. Merely because he has access to its records, however, does not in my view warrant the inference that the candidate has either directly or indirectly caused the expenditures to be made, and unless this can be shown, the committee expenditures are not, in my view, attributable to him.

In State v. Hill, 189 Kan. 403, 369 P.2d 365 (1962), the court pointed out 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 sanction for enforcement. The offenses must be defined

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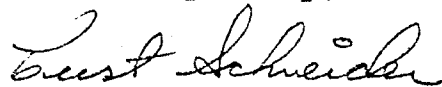
with appropriate definiteness. There must be ascertainable standards of guilty, but impossible standards of specificity are not required. Men of common intelligence cannot be required to guess at the meaning of the statute. The vagueness may be for uncertainty with respect to persons within the scope 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.

K.S.A. 25-903 casts a prohibition on expenditures which extends no further than expenditures made directly by a candidate and expenditures which he indirectly causes to be made, i.e., those which he causes to be made through another, whether it be a spouse, a political committee or whatever. The fact that an expenditure is made in behalf of a candidate does not warrant an inference, as a matter of law, that the candidate indirectly caused it to be made. In this instance, at least, much-vaunted legislative intent may extend further than legislative language. A conviction must be based only upon the latter.

I enclose for your information a copy of a recent opinion issued to Mrs. Margaret Jordan, Johnson County District Attorney, concerning another aspect of K.S.A. 25-903.

Lastly, it should be noted that the Governmental Ethics Committee has jurisdiction over the campaign financing act, which applies only to state officers, and has no application to local political campaigns. I believe that the Committee has no jurisdiction to administer K.S.A. 25-903, for all references to state elections have been deleted from that section.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj

Enclosure



STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

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 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."

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

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 is 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. Be 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.

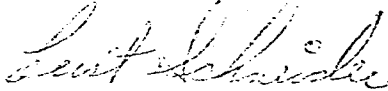
We cannot but conclude that K.S.A. 25-903 cannot be construed to proscribe an expenditure limitation for any office for which no salary is authorized by law, and secondly, that were it so construed and sought to be so applied, it would be found constitutionally defective for failure to define with any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



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj

cc: Lytle, Wetzler and Winn
Attn: John Vratil
Box 8030
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