



STATE OF KANSAS

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**Curt T. Schneider**  
Attorney General

December 4, 1975

ATTORNEY GENERAL OPINION NO. 75-449

Dr. James A. McCain  
Commissioner of Labor  
401 Topeka Boulevard  
Topeka, Kansas

Re: Labor and Industry--Employment Security Law--  
Benefit Eligibility Conditions

Synopsis: The provisions of benefit eligibility which conclusively presume that women are not able nor available to work during the 120 day period because of pregnancy and childbirth are constitutionally impermissible.

\* \* \*

Dear Dr. McCain:

In view of the recent Supreme Court Decision in Turner v. Dept. of Employment Security and Bd. of Review of the Industrial Commission of Utah, 48 U.S.L.W. 3298 (U.S. Nov. 18, 1975), the provisions of K.S.A. 44-705(c) are no longer applicable to claimants seeking unemployment compensation benefits.

K.S.A. 44-705(c) provides in part:

"...Provided further, that no woman shall be deemed to be able to work and available for work for any week during the ninety-day period immediately before the expected birth of her child and for any week during the thirty-day period immediately following the birth of her child..."

This provision creates an irrebuttable and conclusive presumption that a woman is neither able nor available for work during the 120 day period before and after the birth of a child.

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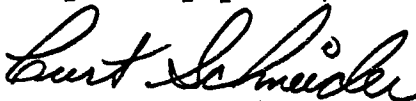
The United States Supreme Court stated in Turner thus:

"...The Fourteenth Amendment requires that unemployment compensation boards no less than school boards must achieve legitimate state ends through more individualized means when basic human liberties are at stake. We conclude that the Utah unemployment compensation statute's incorporation of a conclusive presumption of incapacity during so long a period before and after childbirth is constitutionally invalid under the principles of the LaFleur Case." 48 U.S.L.W. at 3299

The Court in Cleveland Board of Education v. LaFleur, 414 U.S. 632 (1974), noted that "freedom of personal choice in matters of marriage and family life is one of the liberties protected by the Due Process Clause", at 414 U.S. at 639, and that "the ability of any particular pregnant woman to continue at work past any fixed time in her pregnancy is very much an individual matter." *Id.*, at 645. The Utah statute declared unconstitutional in the Turner case, *supra* is almost identical to K.S.A. 44-705(c), and as such, the decision in Turner, *supra*, is applicable to K.S.A. 44-705(c), and renders K.S.A. 44-705(c) unconstitutional as violative of the Fourteenth Amendment's Due Process Clause.

Therefore, pursuant to the Supreme Court decision in Turner, and in accordance therewith, the Kansas Department of Labor and the Kansas Employment Security Division should cease imposition of the benefit eligibility criteria as set forth in K.S.A. 44-705(c).

Very truly yours,



CURT T. SCHNEIDER  
Attorney General

CTS/EJY/gdw