



STATE OF KANSAS

Office of the Attorney General

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

Curt T. Schneider
Attorney General

June 29, 1978

ATTORNEY GENERAL OPINION NO. 78-213

The Honorable Patrick J. Hurley
House Majority Leader
3rd Floor - State Capitol
Topeka, Kansas 66612

Re: Legislature--Committees--Voting Privileges

Synopsis: Nonlegislative members of an advisory committee constituted under K.S.A. 46-1205(b) and appointed to serve a special committee constituted under K.S.A. 46-1205(a) may not vote upon the business of the special committee.

* * *

Dear Representative Hurley:

You advise that the Special Interim Committee on Assessment and Taxation has applied to the Legislative Coordinating Council for authority to permit lay members of an advisory committee of this Special Committee to vote on proposed legislation for introduction in the 1979 legislature. The special committee is created, apparently pursuant to K.S.A. 46-1205(a), which states thus in pertinent part:

"There shall be three principal types of legislative study committees. One principal type of legislative study committee shall be known as 'special committees.' The legislative coordinating council shall appoint members of the legislature to serve as members of various special committees."

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This committee is comprised entirely of legislators. In addition, at the May 12, 1978, meeting of the Legislative Coordinating Council, the preliminary minutes reflect the following:

"Rep. Lady moved that the chairman and vice chairman of the LCC be authorized to act on behalf of the LCC and each be authorized to appoint five nonlegislator members to the advisory committee of the Special Committee on Assessment and Taxation Rep. Slattery seconded the motion and the motion carried."

This action resulted, apparently, in the appointment of a second of the three principal types of legislative study committees enumerated in K.S.A. 46-1205, that provided for by subsection (b) as follows:

"The legislative coordinating council may appoint, or authorize a special committee or a standing committee to appoint, one or more advisory committees. Whenever an advisory committee is appointed or authorized by the legislative coordinating council, the function and mode of operation of the advisory committee shall be prescribed by the legislative coordinating council."

Unlike subparagraphs (a) and (c) of this section, which restrict the membership of special committees and select committees to members of the legislature, subparagraph (b) prescribes no statutory restriction upon the composition of advisory committees to either special or standing committees. Thus, the Council has broad authority under this subsection to create advisory committees to assist either special or standing committees in gathering and reviewing information relating to subjects under study. Such advisory committees are precisely that, *i.e.*, advisory, and the enlistment of persons other than legislators to serve on such bodies does not entail any delegation of legislative power to such persons. The composition of the Special Committee on Assessment and Taxation, however, one of the three principal types of legislative study committees authorized by statute, is more restricted, however. Indeed, its membership is restricted to members of the

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legislature, by the express terms of K.S.A. 46-1205(a). The direction that the legislative coordinating council "shall appoint members of the legislature to serve as members" of such committees implies necessarily that the council shall appoint only members of the legislature to such committees. Only members of the committee may vote upon matters before the committee, and perforce, only legislators may do so.

K.S.A. 1977 Supp. 46-1202 provides in pertinent part thus:

"The legislative coordinating council may adopt and amend rules applicable to its affairs or to the meetings and activities of special committees, standing committees or advisory committees"

The Council cannot authorize by rule that which the statute forbids; i.e.. it may not permit persons who are not members of the legislature to serve as members of special committees constituted under K.S.A. 46-1205(a). To approve a rule which permits members of the advisory committee to the Special Committee on Assessment and Taxation to vote upon the business before the Committee in the same fashion as the members of the Committee itself is to vest those lay members of the advisory committee with the principal perquisite of membership on the special committee itself, a perquisite which is limited by statute only to its members, and thus to legislators.

In addition to these statutory restrictions, there is a constitutional reason for limiting the vote on business before the Special Committee on Assessment and Taxation to only its members. Article 2, § 1 of the Kansas Constitution provides that "[t]he legislative power of this statute shall be vested in a house of representatives and senate." The power to introduce, as well as vote upon, business before the legislative body is surely restricted to its members. Under K.S.A. 46-801(b)(4), when authorized by the legislative coordinating council, a special committee may introduce proposed legislation. To permit persons other than legislators to vote upon the business of the Special Committee on Assessment and Taxation, which votes may thus lead to the introduction of proposed legislation, is to vest in persons other than members of either the house of representatives or the senate an official

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voice in the legislative process of this state, a delegation of legislative power for which there is no constitutional warrant, in my judgment.

Yours truly,

A handwritten signature in cursive script, appearing to read "Curt Schneider".

CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj