



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

June 29, 1978

ATTORNEY GENERAL OPINION NO. 78- 214

Mr. Frank Johnson
Shawnee County Counselor
Shawnee County Courthouse
Topeka, Kansas 66603

Re: Elections--Corporations--Contributions

Synopsis: The decision of the United States Supreme Court in *First National Bank of Boston v. Bellotti*, _____ U.S. _____, _____ L. Ed. 2d _____, 46 L.W. 4371 (April 26, 1978) prohibits continued enforcement of that portion of K.S.A. 25-1709 which prohibits corporate contributions made for the purpose of influencing or affecting the vote on any question submitted to the voters.

* * *

Dear Mr. Johnson:

K.S.A. 25-1709 states thus, in pertinent part:

"No corporation carrying on the business of a bank, trust, surety, indemnity, safe deposit, insurance, railroad, street railway, telegraph, telephone, gas, electric light, heat, power, or water company, or any company having the right to take or condemn land or to exercise franchises in public ways granted by the state or by any county or city; and no trustee or trustees owning or holding the majority of the stock of such corporation, shall pay or contribute in order to aid, promote, or prevent the nomination or election

Mr. Frank Johnson
Page Two
June 29, 1978

of any person to public office, or in order to aid, promote or antagonize the interests of any political party, or to influence or affect the vote on any question submitted to the voters." [Emphasis supplied.]

You inquire concerning the continued validity of the prohibition against corporate contributions to "influence or affect the vote on any question submitted" election in view of the decision of the United States Supreme Court in *First National Bank of Boston v. Bellotti*, _____ U.S. _____, _____ L. Ed. 2d _____, 46 L.W. 4371 (April 26, 1978). There, the Court considered a Massachusetts statute which is drawn in language virtually identical to K.S.A. 25-1709, *supra*, with additional restrictions which are not pertinent here. The statute was proposed to be enforced to prohibit certain corporations from spending money to publicize their views on a proposed constitutional amendment which was to be submitted to Massachusetts voters providing for a graduated income tax on the income of individuals. The Court held that the prohibition abridged expression that the First Amendment was designed to protect, and that it could not constitutionally be applied to prohibit contributions by corporations falling within its scope from making expenditures designed to affect the outcome of the election upon the proposed constitutional amendment. In short, speech which is otherwise protected by the First Amendment does not forfeit that protection merely because it is corporate speech.

Finding that the statute did in fact impinge upon constitutionally protected speech, the Court reached a further question:

"The constitutionality of § 8's prohibition of the 'exposition of ideas' by corporations turns on whether it can survive the exacting scrutiny necessitated by a state-imposed restriction of freedom of speech. Especially where, as here, a prohibition is directed at speech itself, and the speech is intimately related to the process of governing, 'the State may prevail only upon showing a subordinating interest which is compelling,' . . . 'and the burden is on the government to show the existence of such an interest.'"

Mr. Frank Johnson
Page Three
June 29, 1978

The state offered two principal justifications for the prohibition of corporate speech. First, it was urged that the state has a substantial interest in sustaining the active role of individual citizens in the electorate process and thereby preventing diminution of the citizen's confidence in governing. Thus, it was argued that corporations tend to be wealthy and powerful, and may tend to drown out other points of view conflicting with their own. The Court responded that there was no record showing that such was indeed the case:

"If appellee's arguments were supported by record or legislative findings that corporate advocacy threatened imminently to undermine democratic processes, thereby denigrating rather than serving First Amendment interests, these arguments would merit our consideration But there has been no showing that the relative voice of corporations has been overwhelming or even significant in influencing referenda in Massachusetts, or that there has been any threat to the confidence of the citizenry in government."

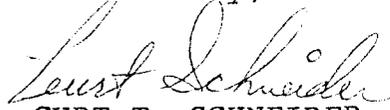
Secondly, it was argued that the statute was designed to protect the interests of the stockholders. For this purpose, the Court held that the statute was overbroad, and not fashioned with sufficient specificity to address this particular asserted purpose. Thus, finding no compelling state interest in suppressing corporate speech which was held entitled to First Amendment protection, the Court held the statute invalid.

This decision directly forbids enforcement of K.S.A. 25-1709 to prohibit corporate contributions for the purpose of influencing or affecting the outcome of a question submitted election. We have no legislative record defining in any fashion the state interests which the statute was defined to serve, and thus, no basis upon which to distinguish the *Bellotti* decision so as to permit continued enforcement of K.S.A. 25-1709 against corporate contributions described above. The Court emphasized that no question was raised in that case regarding the constitutionality of laws prohibiting corporate contributions in candidate elections, and thus, it does not affect the prohibitions in K.S.A.

Mr. Frank Johnson
Page Four
June 29, 1978

25-1709 concerning corporate contributions to oppose or support
candidates for nomination or election.

Yours truly,

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

CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj