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ATTORNEY GENERAL OPINION NO. 79- 46

The Honorable Neil H. Arasmith
State Senator
Senate Chamber
3rd Floor, State Capitol
Topeka, Kansas 66612

Re: Administrative rules and regulations--Joint
Committee on Administrative Rules and
Regulations--Committee's Authority to Introduce
Legislation

Synopsis: The Legislature's Joint Committee on Administrative
Rules and Regulations has authority to introduce
legislation relative to its function of reviewing
administrative rules and regulations, but such
authority is not restricted to the introduction
of legislation modifying, rejecting or revoking
said rules and regulations.

* * *

Dear Senator Arasmith:

You have asked for our opinion as to the extent of authority
of the Joint Committee on Administrative Rules and Regulations
to introduce legislation. In particular, you have inquired
whether the Joint Committee is "restricted only to legislation
that would either reject or modify proposed rules and regula-
tions."

Legislative committees generally "have those powers and only
those which are lawfully conferred on them by the legislative
bodies" 81A C.J.S. States §55. The Joint Committee
on Administrative Rules and Regulations (hereinafter referred
to as "Joint Committee") was established in 1977 (L. 1977,
ch. 321, §19), and its primary responsibilities are set forth
in subsection (c) of K.S.A. 77-436, as follows:

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"All rules and regulations filed in the office of the revisor of statutes shall be submitted to and reviewed by the joint committee on administrative rules and regulations. The committee may introduce such legislation as it deems necessary in performing its functions of reviewing administrative rules and regulations."

From the above-quoted statutory provisions, it is apparent that the Joint Committee has two specific powers: (1) to review all rules and regulations promulgated by administrative agencies; and (2) to introduce legislation it deems necessary to its review functions. Even though the latter involves the exercise of discretion by the Joint Committee, it is our judgment that such discretionary authority is not unfettered. We find no basis for the Committee introducing legislation on every conceivable subject. Rather, we find a clear legislative intent to the contrary, i.e., that legislation introduced by the Joint Committee must be within the purview of its statutory functions. Even though the Committee is authorized to determine the necessity of legislative measures, such determination must be made, in our opinion, within the context of the functions vested in the Joint Committee by the Legislature.

In the same act creating the Joint Committee, the Legislature effected extensive amendments to the procedure prescribed by Article 4 of Chapter 77 of the Kansas Statutes Annotated for the adoption of administrative rules and regulations. Pertinent to your inquiry are the amendments made to K.S.A. 77-426. Subsection (a) thereof was amended to require state agencies to file all new rules and regulations with the Revisor of Statutes on or before December 31 of the year in which such rules and regulations are adopted. Subsection (b) was amended to provide that, as soon as possible after filing, the Revisor shall submit copies of the new rules and regulations to the Joint Committee. Prior to such amendment, such copies were submitted to the Legislative Coordinating Council. By further amendment to subsection (c), the Revisor also is required to submit copies to both houses of the Legislature at the beginning of each regular legislative session.

Finally, this statute was amended by adding new subsections (d) and (e). These subsections prescribe the means whereby the Legislature may modify or reject new or existing rules and regulations. For any newly adopted rule or regulation, the Legislature is authorized to adopt a concurrent resolution rejecting or modifying any such rule or regulation. Subsection (e) provides that "[a]ny rule and regulation included in the Kansas Administrative Regulations or any supplement thereto and any temporary rule and regulation may be amended or revoked by the

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legislature by a bill enacted by the legislature."

As amended in 1977, K.S.A. 77-426 significantly enlarged the Legislature's statutory powers for oversight and review of administrative rules and regulations, by providing for the adoption of various legislative measures effecting modification, rejection or revocation thereof. It also is apparent that the 1977 Legislature has made the Joint Committee an essential element of this statutory oversight and review process, and it authorized the Joint Committee to introduce legislation relative to its review function. Thus we find it reasonable to conclude that the Legislature intended that the Joint Committee, in performing its review function, necessarily has authority to prepare resolutions or bills as are deemed appropriate to modify, reject or revoke rules and regulations. Clearly, in our view, a reading of K.S.A. 77-426 and 77-436(c) in conjunction with one another supports that conclusion. However, we cannot conclude that the Joint Committee's authority to offer legislation is limited only to such legislation, because the language of K.S.A. 77-436(c) is not so restrictive.

In our opinion, other subjects for legislation may be appropriate to the Joint Committee's function of reviewing administrative rules and regulations. For example, proposed amendments to the review process itself might be deemed necessary by the Committee to expedite its statutory charge to review said rules and regulations. In our view, such legislation would not exceed the scope of the Joint Committee's authority to introduce legislation. Similarly, there may be other legislative measures that would facilitate the Joint Committee's performance of its duties that could be appropriately sponsored by the Joint Committee. However, despite recognizing that that Joint Committee's authority to introduce legislation extends beyond the power to introduce bills or resolutions to modify, reject or revoke rules and regulations, we cannot precisely circumscribe in this opinion the extent of such authority. Such can be accomplished on a case by case basis only, with each such legislative measure introduced by the Joint Committee being susceptible of scrutiny to determine whether it relates to the Joint Committee's statutory functions.

We are further persuaded that, as a practical matter, the Legislature itself is the most appropriate body to make such determination. While we have rendered our opinion as to the Legislature's intent as to the scope of the Joint Committee's authority to introduce legislation, it is clearly the prerogative

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of the Legislature to determine whether a joint committee thereof has exceeded its authority to offer measures for the Legislature's consideration. Each house of the Legislature is empowered by Article 2, Section 8 of the Kansas Constitution to determine the rules of its proceedings. Within the context of these rules, either house may refuse consideration of any measure introduced by the Joint Committee which, in the opinion of the members of such house, exceeds the Joint Committee's power to place legislation before that body.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



W. Robert Alderson
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RTS:WRA:gk