February 26, 1982

ATTORNEY GENERAL OPINION NO. 82-53

Mr. William R. Kauffman
State Board of Regents
Suite 1416, Merchants National Bank Tower
Topeka, Kansas 66612

Re: State Departments; Public Officers, Employees -- State Library, Services -- Kansas Register

Synopsis: The Secretary of State, pursuant to K.S.A. 75-2567(b), must provide the Kansas Register to each complete depository library free of charge. Cited herein: K.S.A. 1981 Supp. 75-430, 75-433, K.S.A. 75-2565, 75-2566, 75-2567.

Dear Mr. Kauffman:

As staff attorney for the Kansas Board of Regents, you request an opinion of this office regarding whether the Secretary of State must provide, without charge, the Kansas Register to libraries designated as complete depositories under the provisions of K.S.A. 75-2567. Subsection (b) of that statute states in part:

"Any library designated as a complete depository shall receive one copy of every state publication deposited with the Kansas state library."

Accordingly, it must be determined whether the Kansas Register must be deposited with the state library, for if so, it must also be provided to complete depository libraries.

K.S.A. 75-2566(b) mandates that the state library shall receive any publication issued by any state agency. K.S.A. 75-2566(b) states:

"Each state agency shall deposit with the Kansas state library copies of any publication
issued by such state agency in such quantity as shall be specified by the state librarian."

For purposes of the foregoing, the terms "state agency" and "publication" are defined by K.S.A. 75-2565, which provides in part:

"(a) 'Publication' means any report, pamphlet, book or other materials provided by a state agency for use by the general public;

"(b) 'state agency' means any state office or officer ...." (Emphasis added.)

Pursuant to K.S.A. 1981 Supp. 75-430, the Secretary of State is directed to compile, index and publish a publication to be known as the Kansas Register. K.S.A. 1981 Supp. 75-433 permits the Secretary of State to sell copies of the Kansas Register to state agencies and other subscribers.

Because the Kansas Register is published by a state officer, namely, the Secretary of State, and is intended to be used by any subscriber, which we can only conclude means the general public, it is clearly a "publication" as defined by K.S.A. 75-2565. Therefore, the Kansas Register must be provided to the Kansas State Library as mandated by K.S.A. 75-2566(b).

As noted previously, K.S.A. 75-2567(b) requires that any library designated as a complete depository must receive one copy of every state publication deposited with the Kansas State Library. Moreover, since K.S.A. 75-2566(b) requires the deposit of agency publications with designated state libraries, an agency is without authority to condition such deposit upon the payment of a fee or charge by the library to such agency. Such was clearly not the intent or command of the statute. We note further that the state library currently does not pay any other state agencies for copies of their publications. Hence, in our judgment, the Secretary of State may not condition the deposit of the Kansas Register in designated state libraries upon payment of a subscriber fee or other charge by such libraries.

Thus, it is our opinion that the Secretary of State must provide the Kansas Register to complete depository libraries, free of charge.

Very truly yours

ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS

Bradley J. Smoot
Deputy Attorney General

RTS:BJS:hle