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December 30, 1985

ATTORNEY GENERAL OPINION NO. 85-183

The Honorable Edwin Bideau III
State Representative, Fifth District
123 W. Main
Chanute, Kansas 66720

Re: Courts--District Courts--Classes of Judges of
the District Court

Synopsis: The method of selecting and retaining district magistrate judges does not violate the "one person-one vote" principle. Additionally, the provisions of K.S.A. 20-301a, K.S.A. 20-329, K.S.A. 20-336(d) and K.S.A. 1984 Supp. 20-2908, whereby district magistrate judges are elected or retained in office by county voters while exercising judicial power anywhere within a judicial district, do not violate the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. Cited herein: K.S.A. 20-301a, 20-329, 20-334, 20-336, 20-338, K.S.A. 1984 Supp. 20-2908; U.S. Const., 14th Amend.

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Dear Representative Bideau:

You request our opinion as to whether the method of selecting and retaining district magistrate judges, as prescribed by Articles 3 and 29 of Chapter 20 of Kansas Statutes Annotated, violates the "one person-one vote" principle announced by the U.S. Supreme Court in Baker v. Carr, 369 U.S. 186, 7 L.Ed.2d 663 (1962). You suggest that the constitutional issue arises from the fact

that a district magistrate judge may be assigned to hear civil and criminal cases outside his "home county" (in multi-county judicial districts), even though citizens in such areas have no right to vote on the question of retaining the judge in office.

The district magistrate judge positions within each judicial district are allocated on a county by county basis (K.S.A. 20-338), and a district magistrate judge must be a resident of the county in which he or she is elected or for which he or she is appointed to serve (K.S.A. 20-334). Although district magistrate judges are elected [K.S.A. 20-336(d)] or retained in office (K.S.A. 1984 Supp. 20-2908) by voters of the county in which the position is established, they may be assigned cases (K.S.A. 20-329) and exercise judicial power (K.S.A. 20-301a) anywhere within the judicial district. Thus, it is possible in a multi-county judicial district for a majority of a district magistrate judge's caseload to be outside his or her "home county," even though voters in such areas have no voice in electing the judge or retaining him in office.

In regard to the constitutionality of such a method of electing judges, it has been held that judicial officers are not subject to the one person-one vote principle, and that a state's choice regarding the method of electing its judiciary is not subject to an equal protection challenge in the absence of arbitrary, capricious or invidious action in the choice of election method. Holshouser v. Scott, 335 F.Supp. 928 (M.D.N.C. 1971), aff'd, 409 U.S. 807, 34 L.Ed.2d 68 (1972); Wells v. Edwards, 347 F.Supp. 453 (M.D.La., 1972), aff'd, 409 U.S. 1095, 34 L.Ed.2d 679 (1973). The rationale for not applying the one person-one vote principle to judicial officers has been described as follows:

"[E]ven assuming some disparity in voting power, the one man-one vote doctrine, applicable as it now is to selection of legislative and executive officials, does not extend to the judiciary. Manifestly, judges and prosecutors are not representatives in the same sense as are legislators or the executive. Their function is to administer the law, not to espouse the cause of a particular constituency." Stokes v. Fortson, 234 F.Supp. 575, 577 (N.D. Ga. 1964)

Although the one person-one vote principle does not apply to the allocation of judicial offices within a state, the Equal Protection Clause prohibits arbitrary, capricious or invidious action in the choice of an election method. Holshouser v.

Scott, supra. However, we are not aware of any case which holds that the district from which a judge is elected must coincide with the judge's jurisdictional authority. In this regard, the New York Court of Appeals upheld a statutory scheme whereby certain judges having city-wide civil jurisdiction were elected from municipal districts within the City of New York. See Cox v. Katz, 22 N.Y.2d 905, 294 N.Y.S.2d 544 (1968), cert. denied, 394 U.S. 919, 22 L.Ed.2d 452 (1969). Accordingly, in our opinion the provisions of K.S.A. 20-301a, K.S.A. 20-329, K.S.A. 20-336(d) and K.S.A. 1984 Supp. 20-1908, whereby district magistrate judges are elected or retained in office by county voters while exercising judicial power anywhere within a judicial district, do not violate the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution.

Very truly yours,



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Terrence R. Hearshman
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RTS:JSS:TRH:jm