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January 23, 1986

ATTORNEY GENERAL OPINION NO. 86-7

Robert C. Foulston
Chairman, Supreme Court
Nominating Commission
700 Fourth Financial Center
Broadway at Douglas
Wichita, Kansas 67202

Re: Courts--Supreme Court--Qualifications of Justices
Courts--Court of Appeals--Qualifications of Judges

Synopsis: An attorney who has been regularly admitted to practice law in the State of Kansas, and who has engaged in the active and continuous practice of law in Kansas or any other state for a period of at least 10 years prior to his or her appointment as a justice, is qualified to hold the office of justice of the Kansas Supreme Court, or judge of the Kansas Court of Appeals. Cited herein: K.S.A. 20-105; 20-3002.

* * *

Dear Mr. Foulston:

As Chairman of the Supreme Court nominating committee, you request our interpretation of K.S.A. 20-105. Specifically, you ask whether an attorney who has been regularly admitted to practice law in the State of Kansas, and who has engaged in the active and continuous practice of law in a state other than Kansas for a period of at least 10 years prior to his or her

appointment as a justice, is qualified to hold the office of justice of the Kansas Supreme Court. In that the qualifications for a judge on the Kansas Court of Appeals are the same, our response will deal with both types of positions. It is our understanding that the committee is now meeting to consider nominees for the position recently vacated by Judge Joe Haley Swinehart of the court of appeals, who retired.

K.S.A. 20-105 prescribes qualifications for justices of the Kansas Supreme Court [which qualifications also apply to judges of the Kansas Court of Appeals (K.S.A. 20-3002)], and provides as follows:

"No person shall be qualified to hold the office of justice of the supreme court, unless such person shall have been regularly admitted to practice law in the state of Kansas and has engaged in the active and continuous practice of law, as a lawyer, judge of a court of record or any court in this state, full-time teacher of law in an accredited law school or any combination thereof for a period of at least ten (10) years prior to the date of appointment as justice." (Emphasis added.)

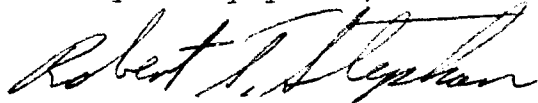
The Kansas Supreme Court has not had occasion to consider whether the practice of law outside Kansas constitutes qualifying experience under the above-quoted statute. However, the grammatical structure of the statute leads one to conclude that qualifying experience as a judge must be acquired in this state, while experience as a lawyer or law school professor may be acquired outside the State of Kansas. In this regard, it appears that 5 years of experience as a lawyer in Colorado and 5 years experience as a judge in Kansas (in the 10 year period preceding the date of appointment) would be sufficient under the statute. This interpretation is in accord with the well-established rule that statutory provisions imposing qualifications for office should be construed in favor of those seeking to hold office:

"Provisions in constitutions and statutes imposing qualifications should receive a liberal construction in favor of the right of the people to exercise freedom of choice in the selection of officers, and in favor of those seeking to hold office. Ambiguities should be resolved in favor of eligibility to office, and constitutional and statutory provisions which restrict the right to hold public office should be strictly construed

against ineligibility." (Footnotes omitted.)
67 C.J.S., Officers §17.

In accordance with the above-quoted authority, it is our opinion that an attorney who has been regularly admitted to practice law in the State of Kansas, and who has engaged in the active and continuous practice of law in Kansas or any other state for a period of at least 10 years prior to his or her appointment, is qualified to hold the office of justice of the Kansas Supreme Court or judge on the Kansas Court of Appeals.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
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RTS:JSS:TRH:jm