



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

September 4, 1986

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
ANTITRUST: 296-5299

ATTORNEY GENERAL OPINION NO. 86-128

The Honorable Keith Roe
State Representative
One Hundred Ninth District
225 W. Webster
P.O. Box 364
Mankato, Kansas 66956

Re: Kansas Constitution--Apportionment of the
Legislature--Reapportionment of Senatorial and
Representative Districts

Synopsis: The amendment of Article 10, Section 1 of the
Kansas Constitution to retain the current
apportionment of the Kansas House of
Representatives for the 1990 general election would
violate the Equal Protection Clause of the U.S.
Constitution. Cited herein: Kan. Const., Art.
10, §1; U.S. Const., 14th Amendment.

* * *

Dear Representative Roe:


You request our opinion as to the constitutionality of
amending Article 10, Section 1 of the Kansas Constitution to
postpone reapportionment of the state's senatorial and
representative districts from 1989 until 1992. Said proposal
is being considered because constitutional problems will arise
if the scheduled reapportionment in 1989 is based on 1980
federal census figures. See Bacon v. Carlin, 575
F.Supp. 763 (Kan. 1983).

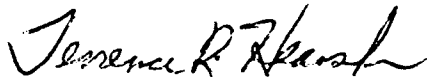
In Bacon, the court upheld the current apportionment of the Kansas legislature, distinguishing it from apportionment schemes (in other states) which had been struck down in four previous cases:

"In Beens, Flateau, Farnum, and Honsey the apportionment schemes declared unconstitutional were based on census figures over ten years old. Realistically, then, those plans were not the sort of 'decennial reapportionment' schemes that the Court indicated 'would clearly meet the minimal requirements for maintaining a reasonably current scheme of legislative representation.' In the instant case, on the other hand, the reapportionment scheme is only four years old and is based on census figures only five years old." (Emphasis added.) 575 F.Supp. at 766.

If Article 10, Section 1 of the Kansas Constitution is amended so as to postpone reapportionment until 1992, the apportionment scheme will be 11 years old and based on census figures 12 years old at the time of the 1990 election of the Kansas House of Representatives. In our judgment, the Bacon case (and the Beens, Flateau, Farnum and Honsey cases cited therein) clearly indicates that an apportionment scheme based on twelve year old census figures is constitutionally defective. Accordingly, it is our opinion that amendment of Article 10, Section 1 of the Kansas Constitution to retain the current apportionment of the Kansas House of Representatives for the 1990 general election would violate the Equal Protection Clause of the United States Constitution.

Very truly yours,


ROBERT T. STEPHAN
Attorney General of Kansas


Terrence R. Hearshman
Deputy Attorney General

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