



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 88- 49

The Honorable Bruce F. Larkin
State Representative, Sixty-Second District
State Capitol, Room 273-W
Topeka, Kansas 66612

Re: State Boards, Commissions and Authorities -- State
Board of Agriculture; Election and Duties of Board
-- Position on Legislative Issues; Selection of
Members

Synopsis: The Kansas state board of agriculture may take a
position on matters of public policy involving
agricultural issues. The method of selecting
members to the board as provided in K.S.A. 1987
Supp. 74-502 and 74-503 does not contravene the
constitutional equal protection rights of Kansas
residents. Cited herein: K.S.A. 46-221; 46-222;
K.S.A. 1987 Supp. 74-502; 74-503; K.S.A. 74-504;
74-504a; 74-504b; 74-530; U.S. Const. Amend. 24;
Kan. Const. Bill of Rights § 7.

* * *

Dear Representative Larkin:

As State Representative for the Twenty-Second District, you
ask our opinion on two matters concerning the Kansas state
board of agriculture (board).

Your first question is whether the board may take a position
supporting or opposing public policy issues. The board of
agriculture is a state agency created pursuant to a
legislative act, K.S.A. 74-502 et seq. The Kansas

statutes concerning state governmental ethics exempt from the definition of "lobbyist" "any state officer or employee engaged in carrying out the duties of his or her office. . . ." K.S.A. 46-222(b)(1). The secretary of the board of agriculture and board members are "state officers or employees" as that term is defined in K.S.A. 46-221.

It is the duty of the board to publish an annual report on "the condition of agriculture throughout the state." Each legislator is to receive a copy of this report. K.S.A. 74-504. In addition, the board may gather other information that "may be of value in promoting the agricultural industry of the state." K.S.A. 74-504. The board is authorized to provide statistical services "[t]o meet the needs and increasing demands for factual data in agricultural and marketing research. . . ." K.S.A. 74-504a. K.S.A. 74-504b grants the board authority to obtain certain information and "such other data as may be of service in the upbuilding and prosperity of the state's agriculture. . . ." It is the duty of the division of markets within the board of agriculture "to perform acts and to do, or cause to be done, those things which are designed to lead to the more advantageous marketing of agricultural products of Kansas." K.S.A. 74-530. House Bill No. 2517, signed by the governor on March 22, 1988, broadens the powers under K.S.A. 74-530 to achieve this purpose.

Clearly, the purpose of the board of agriculture is to provide information about the current condition of agriculture in Kansas and to promote the state's most important industry. To conclude that the board could not speak out on the issues of the day would contradict this purpose. Therefore, it is our opinion that the board of agriculture may take a position on matters of public policy that involve agricultural issues. As this is an official function of the board, the provision of the state governmental ethics act pertaining to lobbying do not apply.

Your second question concerns the method of selecting members of the board. The board is composed of two members from each of the six agricultural districts. K.S.A. 1987 Supp. 74-503. At the annual meeting, board members are elected by delegates chosen by farm organizations across the state. K.S.A. 1987 Supp. 74-502 describes the selection of delegates:

"(a) The farm organizations specified in this subsection, whether now organized or

hereafter to be organized under the laws of Kansas, shall be allowed to select delegates for attendance at the annual meeting of the state board of agriculture. The delegates shall be selected in accordance with the following:

(1) One from each county or district agricultural society composed of one or more counties;

(2) one from each state fair or statewide fair;

(3) one from each county farmers' institute;

(4) one from each county farm bureau association with a voting membership of not less than 100;

(5) one from each county farmers' union with a voting membership of not less than 100;

(6) one from each county grange with a voting membership of not less than 100;

(7) one from each of the eight Kansas co-op council districts with member co-ops composed of producer membership of not less than 100;

(8) one member of the Kansas livestock association from each county in which the Kansas livestock association has a voting membership of not less than 100;

(9) one from each county national farmers' organization with a voting membership of not less than 100;

(10) one from each county Kansas association of wheat growers organization with a voting membership of not less than 100;

(11) one from each association of statewide character representing a particular kind or a particular breed of livestock;

(12) one from each association of a statewide character for promotion of a farm crop or crops; and

(13) one from each nonprofit association, with a voting membership of not less than 100, of statewide character for the promotion or representation of a specific industry in agribusiness. . . .

"(b) In addition to the delegates provided for in subsection (a) of this section, one individual from each of the counties may attend the annual meeting of the state board of agriculture as a delegate, if a petition is signed by not less than 100 qualified electors of the county who are agricultural producers or landowners and who are not voting members of the farm bureau association, farmers' union, grange, national farmers' organization, Kansas association of wheat growers or Kansas livestock association or who are voting members of any such farm organization which has a voting membership of less than 100."

The statute also requires each delegate to be "directly involved in the industry of agribusiness represented."

You are concerned about the legality of the requirement that a person be a member of a certain organization in order to participate in the delegate selection process. Specifically, you question whether mandatory membership in an organization which collects dues is an "indirect poll tax" violative of the Kansas Constitution. Before addressing this issue, we must point out that K.S.A. 1987 Supp. 74-502(b) provides a means by which a person may be a delegate from his or her county without being a member of a farm organization.

A "poll tax" is a fee which must be paid before an elector may exercise his or her right to vote. The Twenty-Fourth Amendment to the United States Constitution provides that an individual cannot be denied the right to vote in a federal

election for failure to pay a poll tax. Section 7 of the Bill of Rights to the Kansas Constitution states that "[n]o . . . property qualification shall be required . . . for any vote at any election. . . ." Further, the United States Supreme Court in Harper v. Virginia State Board of Elections, 383 U.S. 663, 666, 86 S.Ct. 1079, 1081, 16 L. Ed. 2d 169 (1966), held that state imposition of a poll tax violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. The basis of the court's decision was that the right to vote is a fundamental right and that wealth has no relation to voter qualifications. Id.

We were asked in Attorney General Opinion No. 79-243 whether the method of selecting board members meets the constitutional mandates of the judicial doctrine of "one person, one vote" derived from the Equal Protection Clause of the Fourteenth Amendment. We concluded that "the equal protection of Kansas residents is not denied by the membership selection process of an administrative body having the limited powers of the Kansas state Agricultural Board."

In our prior opinion concerning the selection of board members, we examined the powers and duties of the board of agriculture. In noting that the Kansas courts have not applied the suffrage mandates of the equal protection doctrine to statutorily created bodies such as the board, we stated:

"Courts of other jurisdictions have had occasion to address the subject with regard to administrative or legislative bodies akin to the Board herein, and such federal and state courts have consistently considered the nature of the powers of the body in question . . . as the determinative factor in applying or refusing to apply the suffrage mandates of the equal protection clause." Attorney General Opinion No. 79-243, p. 4 (emphasis added).

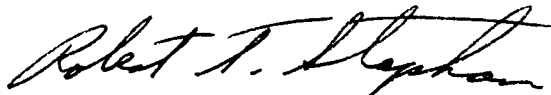
Analysis of various cases from federal and state courts revealed that the equal protection doctrine is applied to entities which exercise general governmental powers. Since the board "is a mere agent for the state legislature in the area of state agricultural matters" and "is merely a creation of a body politic (the state legislature) and derives its powers only from this source," we concluded that the method of

selecting board members did not violate the "one person, one vote" doctrine of the Equal Protection Clause.

In the present case the question is whether the equal protection of Kansas citizens is violated on the basis that dues which may be required to be a member of the organizations involved in the delegate selection process constitute an indirect poll tax. We believe our analysis in Attorney General Opinion No. 79-243 is applicable to this situation. The board of agriculture, created by legislative act, is an administrative agency. Unlike the state legislature, city councils, or county commissions, the board is not a representative body with general governmental powers. Delegates and board members are not chosen to represent the citizenry of Kansas. Instead, they are selected from groups of people who are most affected by this administrative agency. Therefore, we must conclude that the selection of delegates from organizations which may charge dues does not violate the equal protection of Kansas citizens.

In summary, the board of agriculture may take a position on matters of public policy involving agricultural issues. The method of selecting members to the board as provided in K.S.A. 1987 Supp. 74-502 and 74-503 does not violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

Very truly yours,


ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS


Rita L. Noll
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