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June 2, 1988

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ATTORNEY GENERAL OPINION NO. 88- 74

The Honorable Don Montgomery
State Senator, Twenty-First District
1218 Main
Sabetha, Kansas 66534-1835

Re: Crimes and Punishments -- Animals and Nuisances --
Unlawful Sales or Injections of Live Brucella
Abortus Strain 19 Vaccine or Animal Rabies Vaccine;
Constitutionality of Amendment by 1988 Substitute
for House Bill No. 2219

Livestock and Domestic Animals -- Animal Dealers --
Licensure and Registration of Certain Persons
Dealing in Animals; Constitutionality of 1988
Substitute for House Bill No. 2219

Synopsis: 1988 Substitute for House Bill No. 2219 does not violate Art. 2, § 16 of the Kansas Constitution which prohibits a bill from containing more than one subject. The Kansas courts have ruled that a statute should not be declared invalid under this provision unless invalidity is manifest. It is not clearly manifest that H.B. 2219 contains more than one subject, as both bills that were combined in the final version of H.B. 2219 concern animal welfare. None of the circumstances for which Art. 2, § 16 was designed to prevent are present in this case. Further, the title of H.B. 2219 clearly expresses the subject matter and gives fair notice of the content of the bill as constitutionally required. Cited herein: K.S.A. 1987 Supp. 21-1213; 1988 Substitute for House Bill No. 2219; Kan. Const. Art. 2, § 16.

* * *

Dear Senator Montgomery:

As State Senator for the Twenty-First District, you request our opinion regarding the constitutionality of 1988 Substitute for House Bill No. 2219. Specifically, you inquire whether the bill contains more than one subject. You also express concern that the title of the bill does not adequately reflect the scope of legislation contained in the bill.

Article 2, § 16 of the Kansas Constitution provides:

"No bill shall contain more than one subject, except appropriation bills and bills for revision or codification of statutes. The subject of each bill shall be expressed in its title. No law shall be revived or amended, unless the new act contain the entire act revived or the section or sections amended, and the section or sections so amended shall be repealed. The provisions of this section shall be liberally construed to effectuate the acts of the legislature."

The title of 1988 Substitute for House Bill No. 2219, as signed into law by the governor on April 14, 1988, reads as follows:

"AN ACT concerning animal health and welfare; relating to licensure and registration of certain persons dealing in animals; prohibiting certain acts regarding certain animal vaccines and providing penalties for violations; amending K.S.A. 47-1701, 47-1702, 47-1703, 47-1704, 47-1706, 47-1707, 47-1709, 47-1712 and 47-1715 and K.S.A. 1987 Supp. 21-1213 and repealing the existing sections; also repealing K.S.A. 47-1705, 47-1714 and 47-1716."

Sections one through thirteen of the bill amend statutes in chapter 47, article 17 of the Kansas statutes concerning animal dealers, and enact several new sections. These provisions relate to the licensure and registration of certain persons who deal in animals, and have been referred to as the

"puppy mill" bill. Section 14 of H.B. 2219 amends K.S.A. 1987 Supp. 21-1213 concerning the sale and purchase of animal rabies vaccine and live brucella abortus strain 19 vaccine.

The first question is whether 1988 Substitute for H.B. 2219 contains two subjects as prohibited by the Kansas Constitution. H.B. 2219 as originally introduced into the 1987 session of the legislature only amended K.S.A. 1986 Supp. 21-1213 concerning animal vaccines. On February 23, 1988, the House Committee on Federal and State Affairs recommended that a substitute bill be passed. The substitute bill amended K.S.A. 1987 Supp. 21-1213 in a different manner to better reflect that the bill limited the purchase of certain animal vaccines to licensed veterinarians and the sale of the vaccines to licensed veterinarians and manufacturers of the vaccines. See Attorney General Opinion No. 86-24. The House of Representatives passed the substitute bill on a vote of 122 yeas and 1 nay.

The "puppy mill" bill originated in the 1988 session in Senate Bill No. 563. The Senate Committee on Federal and State Affairs amended several provisions of the bill. Included was an amendment which provided that federally licensed facilities would be inspected by Kansas officials once a year while all other animal dealers must be inspected twice a year. 1988 S.B. 563, § 9(b), as amended by Senate Committee; 1988 Senate Journal, p. 1088. S.B. 563 was then amended on the floor of the Senate by the Committee of the Whole. A substantial amendment was made by defining "animal dealer" to exclude persons licensed under federal law. S.B. 563 § 1 (e), as amended by Senate Committee of the Whole; 1988 Senate Journal, p. 1155. The bill unanimously passed the Senate, 40-0. 1988 Senate Journal, p. 1162.

S.B. 563, as amended, was referred to the House Committee on Federal and State Affairs. On March 15 the Committee voted to recommend that the bill be not passed. 1988 House Journal, p. 1655. It is our understanding that the Committee took this action not because members were opposed to licensure and registration of persons dealing with animals, but because they were in favor of such legislation. Committee members recommended S.B. 563 unfavorably because they were opposed to the Senate amendments exempting federally licensed facilities from state regulation. The House Federal and State Affairs Committee had been active in pursuing legislation in this area. See 1987 House Bill No. 2220; 1988 House Bill No. 2747.

On March 30th, Substitute for H.B. 2219 was before the Senate Committee of the Whole on general orders. During discussion the Committee voted to amend the bill by essentially adding S.B. 563 as the first thirteen sections. 1988 Senate Journal, p. 1379. The amendments did not exempt federally licensed facilities from state regulation. 1988 Substitute for H.B. 2219 § 2, as amended by Senate Committee of the Whole. The bill passed the Senate 21 yeas to 16 nays. 1988 Senate Journal, p. 1401. The House concurred in the Senate's amendments to the bill by a vote of 85 yeas and 37 nays. 1988 House Journal, p. 1888.

The Kansas courts have interpreted the constitutional prohibition against two subjects in one bill on a number of occasions. The Supreme Court in State ex rel. Stephan v. Thiessen, 228 Kan. 136 (1980), discussed the requirements of Art. 2, § 16:

'In order to correctly interpret that provision of § 16, article 2 of the constitution, which provides that "No bill shall contain more than one subject, which shall be clearly expressed in its title," its object must be taken into consideration; and the provision must not be construed or enforced in any narrow or technical spirit, but must be construed liberally on the one side, so as to guard against the abuse intended to be prevented by it, and liberally on the other side, so as not to embarrass or obstruct needed legislation.'

'Under this provision of the constitution, the title of an act may be as broad and comprehensive as the legislature may choose to make it; or it may be as narrow and restricted as the legislature may choose to make it. It may be so broad and comprehensive as to include innumerable minor subjects, provided all these minor subjects are capable of being so combined and united as to form only one grand and comprehensive subject; or it may be so narrow and restricted as to include only the smallest and minutest subject.'

"'And while the title to an act may include more than one subject, provided all can be so united and combined as to form only one single, entire, but more extended subject; yet, neither the title to the act nor the act itself can contain more than one subject, unless all the subjects which it contains can be so united and combined as to form only one single subject.'

. . . .

"'Where a section of an act is assailed as being in contravention of said provision of § 16, article 2 of the constitution, it is sufficient if it is germane to the single subject expressed in the title and included therein, provided the act itself does not contain more than this single subject.'

. . . .

"'Where an act contains two separate and independent subjects, having no connection with each other, and the title to the act is broad enough to cover both, held, that probably, as a general rule, the act is unconstitutional and void.'" 228 Kan. at 143, quoting State v. Barrett, 27 Kan. 213, Syl. ¶¶ 3-10 (1882).

In State v. Reeves, 233 Kan. 972 (1983), the court relied on 73 Am. Jur. 2d, Statutes § 125, in determining what constitutes more than one subject in an act:

"'The constitutional prohibition of more than one subject in an act does not impose any limitation on the comprehensive-ness of the subject, which may be as comprehensive as the legislature chooses to make it, provided it constitutes, in the constitutional sense, a single subject and not several. To constitute plurality of subject, an act must embrace two or more dissimilar and discordant subjects,

that by no fair intendment can be considered as having any legitimate connection with or relation to each other. Within the meaning of the constitutional provision, matters which apparently constitute distinct and separate subjects are not so where they are not incongruous and diverse to each other. Generally speaking, the courts are agreed that a statute may include every matter germane, referable, auxiliary, incidental, or subsidiary to, and not inconsistent with, or foreign to, the general subject or object of the act. The constitutional provision is not intended, nor should it be so construed as, to prevent the legislature from embracing in one act all matters properly connected with one general subject or object, but the term "subject" or "object" as used in these provisions is to be given a broad and extended meaning, so as to allow the legislature full scope to include in one act all matters fairly, reasonably, naturally, logically, properly, or directly or indirectly connected with, or related to, each other or the same subject or object. It has been said that there can be no surer test of compliance with the constitutional requirement of singleness of subject than that none of the provisions of an act can be read as relating or germane to any other subject than the one named in the title." 233 Kan. at 978. (Emphasis added).

It has been held that Art. 2, § 16 "should not be construed narrowly or technically to invalidate proper and needful legislation . . . and that where the subject of the registration is germane to other provisions, the act is not objectionable as containing more than one subject. . . ." State ex rel., v. Kansas Turnpike Authority, 176 Kan. 683, 697 (1954). In Garter Enterprises, Inc. v. City of Kansas City, 219 Kan. 620, 622 (1976), the court said that the purposes of Art. 2 § 16

"include the prevention of a matter of legislative merit from being tied to an

unworthy matter, the prevention of hodge-podge or log-rolling legislation, the prevention of surreptitious legislation, and the lessening of improper influences which may result from intermixing objects of legislation in the same act which have no relation to each other."

In State ex rel. Stephan v. Thiessen, the court was asked whether 1978 House Bill No. 3129 (L. 1978, ch. 323) violated the one-subject rule. The first four sections of the bill enacted new statutes concerning release on recognizance and supervised released programs. The remaining two-thirds of the bill dealt with the Kansas law enforcement training center and its funding. 1978 H.B. 3129 as introduced contained only the sections relating to recognizance programs while the provisions relating to the training center were included in Substitute H.B. 2984. After the later bill was defeated by the Senate, the two bills were merged. The court ruled that the bill was unconstitutional:

"These are two separate subjects which cannot lawfully be united under the broad title 'crimes.' Significantly, no crimes are defined in the act and no provision in the act amends or alters the Kansas Criminal Code which is located in Chapter 21 of the Kansas statutes." 228 Kan. at 143-44.

It is important to note that the court in its opinion cited in full the text of then-Governor Robert F. Bennett's message to the House of Representatives explaining why he did not sign the bill. In part, the message stated:

"House Bill 3129, as it was finally presented to me, is a good example of the combination of two separate subjects, one strongly supported and one strongly opposed, in an effort to force through by rider a proposal which had difficulty in passage on its own merits. The original proposal was supported with near unanimity. When the new proposal was added, the vote in both houses became badly divided, leaving to conjecture whether or not the new proposal could have

been passed on its own merits or whether it received its support only as the result of the procedure used. I am of the strong opinion that the interests of the people are better served when both the Legislature and the Governor are allowed to make clear-cut decisions as opposed to the "either/or" judgment required and typified in this bill.'" Id. at 141-42.

In the situation before us, the legislation in question resulted as one bill was amended into another. It is significant that before the combination neither bill had been defeated by either house of the legislature. (S.B. 563 was recommended unfavorably by the House Committee as a tactic to save certain provisions of the proposed legislation.) In Thiessen the court noted that a "matter of legislative merit" was tied to an "unworthy matter." In that case the purpose of amending one bill into another was to log-roll legislation - using a popular bill to force adoption of an unpopular bill. None of the purposes for which Art. 2, § 16 was enacted are present in this case. See supra this opinion p. 6. In addition, both the bills combined in the final version of H.B. 2219 concern animal welfare. The Supreme Court has stated:

"It has further been held that a court should not declare a statute violative of art. 2, § 16, of the Kansas Constitution unless invalidity is manifest. State v. Roseberry, 222 Kan. 715, 717, 567 P.2d 883 (1977). See also 73 Am. Jur. 2d, Statutes § 123; 82 C.J.S., Statutes § 218, p. 362." State v. Reeves, 233 Kan. at 978.

The rule of construction to be followed in construing Art. 2, § 16 was stated by the Court as follows:

"[P]rovisions of the constitution are to be liberally construed to give to the lawmaking power all freedom not positively prohibited by the constitution, and an act under consideration is to be given liberal construction, with all doubts resolved in favor of its constitutionality for the purpose of carrying into effect the will of the legislature." Brickell v. Board

of Education, 211 Kan. 905, 912 (1973). See Kansas Tobacco-Candy Distributors & Vendors, Inc. v. McDonald, 214 Kan. 67, 69 (1974); Westover v. Schaffer, 205 Kan. 62 (1970).

Given the purpose of Art. 2, § 16, and the court's interpretation of this provision, we cannot say that is clearly manifest that H.B. 2219 contains two subjects as prohibited by the constitution.

You also ask whether the title of 1988 Substitute for House Bill No. 2219 adequately reflects the scope of legislation contained in the bill. The Kansas Constitution requires that "[t]he subject of each bill shall be expressed in its title." The guidelines and principles to be followed in applying this constitutional provision were stated by the court in Kansas Tobacco-Candy Distributors & Vendors, Inc. v. McDonald, 214 Kan. at 69:

"It is not necessary that the title be a synopsis or abstract of the entire act in all its details. It is sufficient if the title indicates clearly, though in general terms, the scope of the act. The purpose of the title is to direct the mind to the contents of a bill or of an act, so that members of the legislature and the public may be fairly informed and not deceived or misled as to what it embraces. We must uphold a legislative enactment if we can reasonably do so." (Emphasis added). See State v. Lackey, 232 Kan. 478, 481 (1983); State ex rel., Tomasic v. Kansas City, Kansas Port Authority, 230 Kan. 404, 419 (1981); Westover v. Schaffer, 205 Kan. at 63.

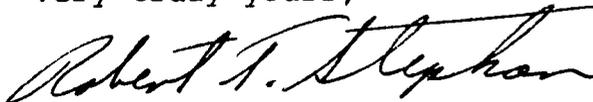
The court will liberally construe a title to uphold the constitutionality of an act. Brickell v. Board of Education, 211 Kan. at 905, Syl. ¶ 2.

The title of Substitute for H.B. 2219 states that it relates "to licensure and registration of certain persons dealing in animals" and prohibits "certain acts regarding certain animal vaccines and providing penalties for violations." The title in question expresses the subject matter and gives fair notice

of the content of the bill. Therefore, we must conclude that the subject of 1988 Substitute for H.B. 2219 is clearly expressed in its title as constitutionally required.

In summary, it is our opinion that 1988 Substitute for House Bill No. 2219 does not violate Art. 2, § 16 of the Kansas Constitution.

Very truly yours,



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