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ATTORNEY GENERAL OPINION NO. 91-24

Professor Dennis D. Prater  
General Counsel  
Kansas Public Disclosure Commission  
109 W. 9th  
Topeka, Kansas 66612

Re: Legislature--State Governmental Ethics--  
Individuals Required to File Written Statements  
of Substantial Interests

Synopsis: Enforcement of the governmental ethics act  
against the employees of interstate agencies by  
criminal prosecution is not favored by the law.  
The terms of the interstate compact or  
agreement take precedence over the unilateral  
actions of any single member state. Cited  
Cited herein: K.S.A. 2-3101; 12-2514; 12-2524;  
K.S.A. 1990 Supp. 46-247; K.S.A. 46-215, et  
seq.; 48-2001; 65-34a01; 72-6011; 79-4301;  
82a-528; 82a-529; K.S.A. 1990 Supp. 74-8731;  
U.S. Const., Art. 1, § 10, cl. 3.

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Dear Professor Prater:

As general counsel for the Kansas public disclosure  
commission, you have been directed to request our opinion  
concerning K.S.A. 1990 Supp. 46-247(f).

K.S.A. 1990 Supp. 46-247 provides in part:

The following individuals shall file written statements of substantial interest, as provided in K.S.A. 46-248 to 46-252, inclusive, and amendments thereto:

. . . .

(f) the administrator or executive director of the education commission of the states, the interstate compact on agricultural grain marketing, the Mo-Kan metropolitan development district and agency compact, the Kansas City area transportation district and authority compact, the midwest nuclear compact, the central interstate low-level radioactive waste compact, the multistate tax compact, the Kansas-Oklahoma Arkansas river basin compact, the Kansas-Nebraska Big Blue river compact, and the multistate lottery.

The Commission's question is, ". . . whether it has the authority to enforce the provisions of K.S.A. 46-247 to K.S.A. 46-251 when applied to an individual who is a non-resident of our state and is an individual employed by such entities."

K.S.A. 46-248 through K.S.A. 46-250 establish the mechanics by which statements of substantial interest are generated. K.S.A. 46-251 is the criminal law enforcement provision which seeks to assure compliance with K.S.A. 1990 Supp. 46-247. The means of civil law enforcement contained in K.S.A. 1990 Supp. 46-280 is not considered in this opinion.

Kansas is a member of 37 interstate compacts and agreements. 1990 K.S.A. General Index, p. 130. In 1988 the Kansas Legislature amended the state governmental ethics act, K.S.A. 46-215 et seq., to include the requirement that the administrators or executive directors of 10 interstate compacts or agreements file statements of substantial interest. L. 1988, ch. 180, § 1. The ten affected compacts or agreements are listed below:

1. compact on education, K.S.A. 72-6011;
2. interstate compact on agriculture grain marketing, K.S.A. 2-3101;
3. compact between Missouri and Kansas creating the MO-KAN metropolitan development district and the MO-KAN development agency, K.S.A. 12-2514;
4. compact between Kansas and Missouri creating the Kansas City area transportation district and the Kansas City area transportation authority, K.S.A. 12-2524, congressional approval found at 80 Stat. 826, PL 89-599;
5. midwest nuclear compact, K.S.A. 48-2001;
6. central interstate low-level radioactive waste compact, K.S.A. 65-34a01, congressional approval found at 99 Stat. 1842, PL 99-240;
7. multistate tax compact, K.S.A. 79-4301;
8. Arkansas river basin compact, Kansas-Oklahoma, K.S.A. 82a-528;
9. Kansas-Nebraska Big Blue river basin compact, K.S.A. 82a-529, congressional approval found at 86 Stat. 193, PL 92-308; and
10. interstate agreement creating a multistate lottery, K.S.A. 74-8731.

In examining the impact of K.S.A. 1990 Supp. 46-247(f) on the above listed compacts and agreements, it is noted that K.S.A. 1990 Supp. 46-247(f) was enacted into law after Kansas joined said compacts and agreements. Further, for the purposes of this opinion it is assumed that all of the above listed compacts and agreements are valid. That is to say they either comply with the requirements of Art. 1, § 10, cl. 3 of the United States Constitution, Texas v. New Mexico, 482 U.S. 124, 107 S.Ct. 2279, 96 L.Ed.2d 105 (1987), or are exempted from compliance with that portion of the Constitution, Cuyler v. Adams, 449 U.S. 433, 101 S.Ct. 703, 66 L.Ed.2d 641 (1981).

In examining the enforceability of K.S.A. 1990 Supp. 46-247(f), one must remember that by joining a compact or agreement Kansas delegated a certain portion of its sovereignty to the interstate agencies created by the compact or agreement. Petty v. Tennessee-Missouri Bridge

Commission, 359 U.S. 275, 79 S.Ct. 785, 3 L.Ed.2d 804 (1959). In return for this delegation, benefits are received. If the benefits are insufficient, Kansas can withdraw from any of the above listed compacts and agreements.

However, so long as Kansas chooses to remain in a compact or agreement, it can not unilaterally enforce legislation which affects the inner workings of the interstate agency created by the compact or agreement, unless such unilateral action is authorized by the compact itself. Dryer v. Sims, 341 U.S. 22, 71 S.Ct. 557, 95 L.Ed. 713 (1951); Cal. Tahoe Regional Planning v. Sahara Tahoe Corp., 504 F.Supp. 753 (D.Nev. 1981); C.T. Hellmuth v. Washington Metro Area Trans., 414 F.Supp. 408 (D.MD 1976); 81A C.J.S. States § 32 (\_\_\_\_); see also R. Leach and R. Sugg, Jr., The Administration of Interstate Compacts (1959).

An examination of the following compacts reveals the creation of self contained interstate agencies. The personnel of such agencies can not be unilaterally compelled to submit statements of substantial interest under the threat of criminal prosecution.

1. Compact on education. See especially Art. III(D) and (E), as well as Art. IV.

2. Interstate compact on agriculture grain marketing. See especially Art. III(a)(1), (a)(5), (a)(6) and (a)(9)

3. Central interstate low level radioactive waste compact. See especially Art. IV(a), (g) and (k)(2), as well as Art. VI(b).

4. Multistate tax compact. See especially Art. VI(1)(a), (1)(f) and (1)(g), as well as Art. XI(c).

An examination of the following compacts reveals that the interstate agencies created by said compacts could possibly be subject to criminal enforcement of K.S.A. 1990 Supp. 46-247(f). In making this list we in no way suggest that any person should be prosecuted. There is no evidence that these interstate agencies have received non-compliance notices provided for in K.S.A. 46-248a. More importantly, there is no evidence that any particular person has been in violation of the state governmental ethics act. This list is provided only for the purpose of alerting these agencies of the fact that their authorizing compacts are of such a nature as to create the possibility of criminal liability

for non-compliance with the act. It is strongly suggested that these agencies contact the public disclosure commission immediately and discuss the nature of their agency, as well as the possible need for future compliance with the act.

1. Midwest nuclear compact. See especially Art. II(a), (e) and (f), as well as Art. VIII(a).

2. Compact between Missouri and Kansas creating the MO-KAN metropolitan development district and the MO-KAN development agency. See especially Art X(1), (4).

3. Compact between Kansas and Missouri creating the Kansas City area transportation district and the Kansas City area transportation authority. See especially Art. VI and VII.

An examination of the following compacts reveals they do not provide for the type of interstate administrative agency which has ever or, most probably, would ever require an administrator or executive director.

1. Arkansas river basin compact, Kansas-Oklahoma. See especially Art. X and Art. XI.


2. Kansas-Nebraska Big Blue river compact. See especially Art. III.

An examination of the following compact reveals that its agency has voluntarily complied with K.S.A. 1990 Supp. 46-247(f).

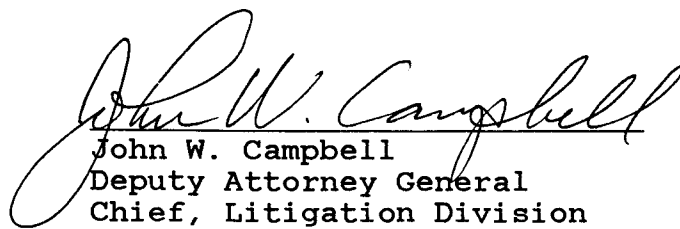
1. Interstate agreement creating a multistate lottery.

In closing, we note the positive nature of the multistate lottery's compliance with K.S.A. 1990 Supp. 46-247(f). Due to the nature of interstate agreements we suggest that this means of enforcement should be adopted as the primary method of seeking compliance with K.S.A. 1990 Supp. 46-247(f).

Sincerely,

  
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Attorney General

Dennis D. Prater  
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John W. Campbell  
Deputy Attorney General  
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