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ATTORNEY GENERAL OPINION NO. 91- 52

The Honorable Edward F. Reilly
State Senator, Third District
State Capitol, Room 255-E
Topeka, Kansas 66612

Re: State Boards, Commissions and Authorities--State Board of Agriculture--Annual Meeting; Election of Members; Agricultural Districts Established; Officers; Expenses

Synopsis: The election process of the secretary of agriculture by the state board of agriculture pursuant to K.S.A. 1990 Supp. 74-503 is constitutional. Cited herein: K.S.A. 1990 Supp. 74-502; 74-503; Kan. Const., art. 15, § 1.

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Dear Senator Reilly:

As senator for the third district you inquire about the constitutionality of K.S.A. 1990 Supp. 74-503, providing for the secretary of agriculture's election by the members of the board of agriculture (board). You indicate that because the board of agriculture receives public funds that some of your constituents feel the secretary of agricultural should be accountable to the public at large and elected by taxpayers.

You indicate that the board is elected by and from delegates selected by various farm organizations. [The statute, K.S.A. 1990 Supp. 75-502, lists thirteen classes of farm organizations). Additionally, a district landowner can be a delegate if a petition is signed by 100 qualified electors who

are agricultural producers or landowners that are not voting members of the private farm organizations selecting the other delegates.

K.S.A. 1990 Supp. 74-502 additionally requires, that: each of the farm organizations meet seven requirements [subsection (c)]; each delegate be authorized by the members of the organization the delegate represents; no delegate selected can be an employee of any cooperative; each delegate, except in case of the delegate from county and district agricultural societies, be a bona fide farmer or breeder of livestock [subsection (d)]; the county or district agricultural societies can forfeit their representation if their agricultural fairs are not to up adequate standards and their representation may be taken by another society [subsection (e)]. It is fair to state that representation by delegates is quite diverse and the authority is not confined to farm organizations. See K.S.A. 1990 Supp. 74-502.

The state board of agriculture elects the secretary of agriculture pursuant to K.S.A. 1990 Supp. 74-503 which states:

"It shall be the duty of the officers and the members of the state board of agriculture, together with so many of the authorized delegates as shall be in attendance, to meet at the capital of the state on the second Wednesday of January of each year, and proceed to elect two members of the board from each agricultural district hereinafter established, who shall constitute the state board of agriculture.

. . . .

"The secretary of the board shall be elected by the members of the board for a term of two years. Every newly elected secretary of the state board of agriculture elected on or after the effective date of this act shall be elected subject to confirmation by the senate as provided in K.S.A. 75-4315b and amendments thereto."

At issue is the power of the legislature to restrict the authority to appoint the secretary of agriculture to those

persons elected to the board of agriculture by delegates selected from private farm organizations and some qualifying landowners or agricultural producers.

Neither the Kansas board of agriculture nor its members or officers' elections are provided for in the Kansas constitution. The subject of appointments is addressed in article 15, section 1 which states: "All officers whose election or appointment is not otherwise provided for shall be chosen or appointed as may be prescribed law." Thus, the legislature is free to act to appoint or to restrict appointment to a selective group, except where restricted by the constitution. Jansky v. Baldwin, 120 Kan. 332, 334 (1926); Sartin v. Snell, 87 Kan. 485, 494 (1912); Goodrich v. Mitchell 68 Kan. 765, 768 (1904); Leek v. Theis, 217 Kan. 784, 797 (1975); State, ex rel., v. Bennett, 219 Kan. 285 (1976); see also Kan. Const., art. 2, § 18.

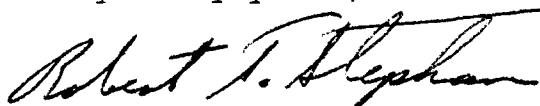
The question of whether the legislature may restrict appointment to office to one belonging to a particular body or organization has been addressed by the Kansas Supreme Court. In Marks v. Frantz, 179 Kan. 638 (1956), the court rejected a constitutional challenge to a statute creating a board selected from a list submitted by a private organization. The statute created a board of examiners in optometry and required the governor to select three members from the list submitted. After noting the statutory nature of the board's creation and the presumptions favoring the constitutionality of legislative enactments, the court held the statutory appointment constitutional. The court stated:


"There is no constitutional limitation on who may be appointed, nor any constitutional restriction on the legislature exercising its power as it shall see fit. As a matter of fact the legislature has provided a restricted power of appointment in many instances. Examples of restrictive appointment to specified boards may be found in the following: state board of agriculture, by G.S. 1949, 74-501, and G.S. 1955 Supp. 74-502 and 503. . . ." Id. at 649.

Senator Edward F. Reilly
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For the foregoing reasons it is our opinion that the secretary of agriculture's election process by the board of agriculture as authorized by K.S.A. 1990 Supp. 74-503 is constitutional.

Very truly yours,


ROBERT T. STEPHAN
Attorney General of Kansas


Guen Easley
Assistant Attorney General

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