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April 17, 1992

ATTORNEY GENERAL OPINION NO. 92- 52

The Honorable Joan Finney
Governor of the State of Kansas
State Capitol, 2nd Floor
Topeka, Kansas 66612-1590

Re: Constitution of the State of Kansas--
Legislature--Subject and Title of Bills; 1992 House
Bill No. 2646 Regarding Health Care; Abortion

Synopsis: 1992 House Bill No. 2646, dealing with health care
issues and regulation of abortion, does not violate
the constitutional prohibition against bills
containing more than one subject. Cited herein:
K.S.A. 21-3407; 21-3721; Kan. Const., art. 2, §
16; 1992 House Bills No. 2646, 2778.

* * *

Dear Governor Finney:

You request our opinion regarding 1992 House Bill No. 2646 and
its conformance with article 2, section 16 of the Kansas
constitution. You express your concerns as follows:

"House Bill 2646 addresses two policy areas, i.e., regulation
of abortion and criminal trespass. While the provision
regarding criminal trespass (Section 6) includes definitions
of 'health care facility' and 'health care provider', I am
concerned that this is an inadequate nexus between the two
otherwise unrelated policy areas to achieve conformance with
Article 2, Section 16 of the Constitution of the State of
Kansas. Therefore, I seek your opinion as to whether House

Bill 2646 comports with Article 2, Section 16 of our state Constitution.

"In this regard, I am aware that 'appropriation bills and bills for revision or codification of statutes' are exempted from the one-subject requirement of our Constitution and that House Bill 2646 was introduced by the House Committee on Appropriations. Hence, I also inquire whether these circumstances are sufficient to achieve conformance with Article 2, Section 16 of the Constitution of the State of Kansas."

Article 2, section 16 provides in pertinent part:

"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. . . . The provisions of this section shall be liberally construed to effectuate the acts of the legislature."

This provision has been construed and applied many times by the Kansas appellate courts. The basic rules were enunciated by the Supreme Court in State v. Barrett, 27 Kan. 218, syl. ¶¶ 3-10 (1882) and reiterated in State ex rel. Stephan v. Thiessen, 228 Kan. 136, 143 (1980):

"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 the title to an act is not broad enough to include everything contained in the act, that which is not included within the title must be held to be invalid, for such is evidently the manifest intention of the constitution; and the courts have no power to enlarge or extend or amplify the title to the act, any more than they have to enlarge or diminish or modify or change the act itself.

"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." (Emphasis added).

In Garten Enterprises, Inc. v. City of Kansas City, 219 Kan. 620, 622 (1976), the court stated that the purposes of the one subject in a bill requirement of article 2, section 16 were:

"[T]he 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."

The court's standard of review was restated most recently in Harding v. K.C. Wall Products, Inc., No. 66,513, slip op. at 30, 31 (Kan. April 10, 1992) [quoting State v. Reves, 233 Kan. 972, Syl. ¶ 1 (1983)]:

"'Art. 2, § 16, of the Kansas Constitution should not be construed narrowly or technically to invalidate proper and needful legislation, and where the subject of the legislation is germane to other provisions, the act is not objectionable as containing more than one subject or as containing matter not expressed in the title. This provision is violated only where an act embraces two or more dissimilar and discordant subjects that cannot reasonably be considered as having any legitimate connection with or relationship to each other.'"

In State v. Thiessen, supra, the court held the legislation before it violated article 2, section 16:

"Sections 1 through 4 of HB 3129 are exclusively concerned with certain aspects of criminal procedure. The balance of the bill is concerned with the Kansas law enforcement training center. 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. . . ."

In that case, the two areas dealt with in the bill were originally the subjects of separate bills. One of the bills had been voted down in the Senate but subsequently merged with the other bill to form the legislation in question. This was clearly an attempt to log-roll the "meritless" legislation.

By contrast, 1992 House Bill No. 2646 is titled:

"An Act concerning health care; relating to abortion; prohibiting certain acts with regard to abortion and prescribing penalties therefor; requiring counseling before performance of abortions on certain minors; requiring notification of certain persons before performance of abortions on certain minors; prohibiting certain acts with regard to certain health care facilities and providing penalties therefore; imposing certain prohibitions on political subdivisions; requiring informed consent to certain abortions; amending K.S.A. 21-3721 and repealing the existing section; also repealing K.S.A. 21-3407."

Thus, the title expresses the broad, comprehensive subject of health care, as well as more narrow and restricted subjects such as prohibiting certain acts with regard to abortion, prohibiting certain acts with regard to health care facilities and amending K.S.A. 21-3721. We believe the subject of the bill is adequately expressed in the title in contrast to the title under review in Thiessen. Further, there is no evidence of log-rolling in the enactment of 1992 House Bill No. 2646. No one of its provisions had been specifically rejected and then later placed in a separate, dissimilar bill which had previously been viewed favorably. See 1992 House Bill No. 2778.

House Bill No. 2646 is more analogous to the bill reviewed in State v. Reves, supra:

"In enacting Senate Bill No. 699 the Legislature sought to provide a comprehensive scheme for the stricter enforcement and prosecution of alcohol or drug-related traffic offenses and the enhancement of penalties therefor. To accomplish this end it was necessary for the legislature to amend existing statutory provisions relating generally to subjects other than alcohol and drug-related traffic offenses, including suspension and revocation of drivers' licenses, admissibility of evidence of a driver's blood alcohol consent or refusal to take a blood alcohol test, the use of diversion agreements by county or district attorneys in lieu of prosecution for various criminal offenses, and the record on appeal in municipal and district court prosecutions resumed upon failure to comply with a diversion agreement.

. . . .

"These provisions are all germane to the broad encompassing subject of alcohol and drug-related traffic offenses. None of the revisions to existing statutes or newly enacted provisions contained in the act can be said to be so diverse or dissimilar as to have no legitimate connection or relation to the subject of alcohol or drug-related traffic offenses." Reves, 233 Kan. at 979, 980.

The sections in 1992 House Bill No. 2646 may be summarized as these: Section 1 defines terms used throughout the bill; section 2 legalizes contraception devices and prohibits local units of government from regulating abortion; section 3 criminalizes abortions of viable fetuses except in limited circumstances; section 4 requires counseling prior to and after the performance of an abortion on a minor except in limited circumstances; section 5 requires parental notification prior to the performance of an abortion on a minor except in limited circumstances; section 6 amends the criminal trespass statute to prohibit interference with access to or from a health care facility, including those which provide abortion services; section 7 requires informed consent prior to

performance of an abortion except in limited circumstances; section 8 is a severability clause; section 9 repeals K.S.A. 21-3407 and 21-3721; and section 10 sets forth the effective date of the act. In enacting this bill, the legislature sought to deal with health care, particularly in the area of abortion. The provision with which you are concerned, section 6, was believed necessary to ensure the accessibility of health care facilities for abortion-related services as well as other health care services. Evidence of this appears in the supplemental note attached to the bill which states in the section discussing the bill's background:

"The City of Wichita's arrest policy last summer (over 2,700 arrests during the abortion protests) was to charge persons with loitering who were on sidewalks, rights-of-way, and easements and blocked access to clinics. Those who were on private property, e.g., parking lots and inside buildings were charged with criminal trespass. H.B. 2646 expands the crime of criminal trespass to include blocking access to medical care facilities on both public and private property."

The amendment to K.S.A. 21-3721 is germane to the broad encompassing subject of health care and regulation of abortion. It cannot be said "to be so diverse or dissimilar as to have no legitimate connection or relation to the subject of" health care. It is therefore our opinion that 1992 House Bill No. 2646 does not violate article 2, section 16 of the Kansas constitution. Since we have opined that the bill does not violate the general constitutional prohibition of two subjects, we need not consider the exceptions to the general rule for appropriation bills and bills for revision or codification of statutes.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Julene L. Miller
Deputy Attorney General