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ATTORNEY GENERAL OPINION NO. 92- 86

The Honorable Bob Vancrum
State Representative, Twenty-Ninth District
9004 W. 104th Street
Overland Park, Kansas 66212

Re: State Departments; Public Officers and
Employees--State General Fund Appropriations,
Demand Transfers and Expenditures--Omnibus
Reconciliation Spending Limit Bill; Compliance With
Statutory Spending Limits

Synopsis: 1992 House Bill No. 3215, the omnibus
reconciliation spending limit bill, suspends by
implication the spending limit provisions of K.S.A.
1991 Supp. 75-6701 et seq. Even if the
provisions are not suspended, any inconsistency
between the two raises political questions only,
over which a court would refuse to exercise
jurisdiction. Cited herein: K.S.A. 1991 Supp.
75-6701; 75-6702; 75-6703; 75-6704; Kan. Const.,
art. 2, § 16.

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Dear Representative Vancrum:

As representative for the twenty-ninth district you request
our opinion regarding compliance of 1992 House Bill No. 3215,
the omnibus reconciliation spending limit bill, with spending
limit legislation found at K.S.A. 1991 Supp. 75-6701 et
seq.

K.S.A. 1991 Supp. 75-6702 requires that the last bill of each session be the "omnibus reconciliation spending limit bill." It provides that during the 1992 session there must be a budgeted ending balance equal to at least 1% of the total authorized expenditures (excluding amounts transferred to the state cash operating reserve fund).

The second spending limit found in the act is contained in K.S.A. 1991 Supp. 75-6703, which establishes the state cash operating reserve fund. This section requires that beginning with the 1992 regular session,

"the legislature shall include in the omnibus reconciliation spending limit bill for such session, provisions to transfer moneys from the state general fund to the state cash reserve fund on the first day of the ensuing fiscal year in an amount equal to not less than 5% of the total authorized expenditures and demand transfers from the state general fund for such year, but excluding the amount transferred to the state cash operating reserve fund under this section."

Subsection (d) then allows money to be transferred back to the general fund during the year under certain circumstances.

The final spending limit in the act is contained in K.S.A. 1991 Supp. 75-6704 which generally requires the director of the budget to monitor and report on the status of the general fund and reserve fund. If the director anticipates an unencumbered ending balance of less than \$100,000,000, she reports this to the governor, who may then issue proportionate across the board cuts.

According to your letter, you believe these spending limitations may have been violated in two manners in 1992 House Bill No. 3215. First you point out that you understand the ending balance for 1993 is projected to be \$285 million (Richard Ryan, director, legislative research department, projects an ending balance of \$298.2 million), but that \$193 million of this is money already committed for school aid by fiscal year 1994. You question whether the \$193 million is properly included in the ending balance because it is arguably encumbered. Assuming that the \$193 million is not includable in the ending balance, the 1% and 5% reserves mandated by K.S.A. 75-6703 plus 75-6704 have not been met. Secondly, you

point out that House Bill No. 3215 does not appear to be in compliance with K.S.A. 1991 Supp. 75-6703, because the bill does not contain an express provision transferring the mandated 5% to the reserve fund.

Properly enacted appropriations bills have the same force and effect as other legislative enactments. See State ex rel. Stephan v. Carlin, 230 Kan. 252 (1981).

It is within the legislative branch's exclusive authority to "make, amend or repeal laws." State ex rel. Stephan v. Kansas House of Representatives, 236 Kan. 45, 59 (1984). Matters such as the size of the state's expenditures and spending limits are examples of legislative authority. Thus, it is within the legislature's power to amend or repeal any statutory spending limit. Although article 2, section 16 of the Kansas constitution generally requires an express amendment, courts commonly find that there has been a repeal by implication when statutes are inconsistent. In Richards v. Etzen, 231 Kan. 704, 707 (1982), the court said,

"It is a settled rule of statutory construction that where an irreconcilable conflict exists between statutes, the latest enactment will be held to supersede, repeal or supplant the earlier by implication. Thus, the later enactment must prevail." (Citation omitted.)

Because House Bill No. 3215 is a later enactment that may conflict with K.S.A. 1991 Supp. 75-6703 by omitting the 5% appropriation to the reserve fund, we believe that if a court found such conflict, the court would hold that House Bill No. 3215 impliedly repeals or supplants K.S.A. 75-6703, possibly holding that it suspends the 5% requirement for one year.

In any event, while it is true that the Attorney General may bring a quo warranto action against the legislature to prevent it from acting in an unlawful manner, (see State ex rel. Stephan v. Kansas House of Representatives, supra), there are court imposed limits to such actions. Courts generally refuse to exercise their authority when they believe that a question is a "political question." In Leek v. Theis, 217 Kan. 784, Syl. ¶ 18 (1975), the court described this doctrine:

"Prominent on the surface of any case held to involve a political question is found a

textually demonstrable constitutional commitment of the issue to a coordinate political department; or lack of judicially discoverable and manageable standards for resolving it; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question."

We note that the issues raised here all concern budgetary matters which would generally be solely within the legislature's province so long as the legislature did not violate some other constitutional rule in making the appropriations. You question whether the \$193 million is properly included within the ending balance. Certainly the spirit of the legislation requiring a certain minimum ending balance is to insure that the state can pay its bills, and if money included in the ending balance is committed for the succeeding year, the spirit of the requirement is ignored. As noted above, however, the legislature can amend, suspend or repeal these limitations by subsequent enactments. In essence, therefore, you question the legislature's judgment in doing so. "The wisdom and expediency of the actions [of a legislative body] . . . do not constitute a judicial question but rather a political question over which the judiciary has no jurisdiction over the subject matter." Allsen v. Craig, 1 Kan.App.2d 301, 307-08 (1977).

In Outagamie County v. Smith, 155 N.W.2d 634 (Wis. 1968), the Wisconsin Supreme Court refused to review a legislative decision absent a constitutional question, saying:

"This Court will not interfere with the conduct of legislative affairs in the absence of a constitutional mandate to do so or unless either its procedure or end result constitutes a deprivation of constitutionally guaranteed rights. Short of such deprivations which give this Court jurisdiction, recourse against legislative errors, nonfeasance, or questionable procedure is by political action only."

We believe that the question of whether the \$193 million is properly included in the ending balance is purely a political question. If the legislature erred in answering this question, the only recourse is by political action.

We also believe that the omission of an appropriation of 5% of total budgeted expenditures to the operating reserve fund is primarily a political question.

Only one question of constitutional magnitude remains: Article 2, section 16 of the Kansas constitution limits bills other than appropriation bills to "one subject." Appropriation bills may contain multiple appropriation items, but may not contain subjects unrelated to appropriations. State ex rel., Stephan v. Carlin, 230 Kan. 252, Syl. ¶ 3 (1981). The Kansas Supreme Court described what may be included in an appropriation bill without violating the "one subject" limit:

"Appropriation bills may direct the amounts of money which may be spent, and for what purposes; they may express the legislature's direction as to expenditures; they may transfer funds from one account to another; they may direct that prior unexpended appropriations lapse. State v. Carlin, 230 Kan. at 258.

We believe that a decision to repeal or suspend the mandated 5% appropriation to the relief fund is an item properly included in an appropriation bill -- it is a direction as to the amount of money to be spent. The one subject rule has not been violated.

In conclusion, 1992 House Bill No. 3215 may violate the spirit of the spending limits found at K.S.A. 1991 Supp. 75-6701 et seq. However, in our opinion House Bill No. 3215 suspends by implication the provisions of K.S.A. 1991 Supp. 75-6701 et seq. Even if this were not the case, any violations of the statutory spending limits raise political questions only,

and we could not successfully challenge such violations as we see no questions of constitutional magnitude arising from such a violation.

Very truly yours,



Robert T. Stephan
Attorney General of Kansas



Steve Phillips
Assistant Attorney General

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