

FILE

Subject State Prisons
Legislature 1974

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STATE OF KANSAS

Office of the Attorney General

State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

VERN MILLER
Attorney General

February 6, 1974

Opinion No. 74- 36

Honorable Don Christy
Senator, Thirty-Ninth District
Senate Chamber
Topeka, Kansas 66612

Dear Senator Christy:

You inquire concerning section 31 of 1974 House Bill 1725, which states in pertinent part thus:

"No legislator shall participate, by voting or any other action, on the floor of either house, or in committee or elsewhere, in the enactment or defeat of legislation in which he has a personal interest which is in substantial conflict with the proper discharge of his duties" [Emphasis supplied.]

You state that you have many interests relating both to your income and to your training as a conservationist. You question whether your financial interests in agricultural enterprises would preclude you under this bill from voting on issues related to agriculture. Further, you question whether, inasmuch as agricultural and related interests, combined with other interests in Southwest Kansas, have sent you to the legislature to represent them, this bill would potentially limit your representation of your constituents.

Section 32 defines the phrase "personal interest" underscored supra:

"As used in section 31, a legislator has a personal interest which is in substantial conflict with the proper discharge of his duties in the public interest, if he has reason to believe or expect that he will derive a direct monetary gain or suffer a direct monetary loss, as the case may be, by reason of his official activity. No legislator has a personal interest which is in substantial conflict with

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the proper discharge of his duties in the public interest, if any benefit or detriment accrues to him as a member of a business, profession, occupation or group to no greater extent than to any other member of such business, profession, occupation or group."

The definition of "personal interest" is somewhat equivocal. On the one hand, a legislator is deemed to have a "personal interest" which "is in substantial conflict with the proper discharge of his duties in the public interest" if he has "reason to believe or expect that he will derive a direct monetary gain or suffer a direct monetary loss . . . by reason of his official activity." However, even though a legislator may have an interest in the enactment or defeat of legislation based on the belief or expectation that he will derive a direct monetary gain or suffer a direct monetary loss therefrom, he is not deemed to have a "personal interest" in the bill if the benefit or detriment which may accrue to him is no greater in extent than that which accrues to any other member of his business, profession, occupation or group.

Thus, without reference to the content of any specific bill before the Legislature, and purely by way of illustration, a member of the Legislature who owned rental housing property might be called upon to vote for or against a bill imposing certain responsibilities upon such owners. The legislator might fear that as a result of its enactment, he would suffer a direct monetary loss. If this loss were of the type shared in common with others of the class of landlords or property owners affected by the bill, and the anticipated monetary loss which he expected were not particular to him, but of a type and extent reasonably expected to be borne commonly by members of the class of persons similarly situated, i.e., owners of rental housing property, the legislator would not be deemed to have a "personal interest . . . in substantial conflict with the proper discharge of his duties in the public interest" in voting upon the bill in question.

Section 31 directs that no legislator shall "participate, by voting or any other action, on the floor of either house, or in committee or elsewhere" in the enactment or defeat of legislation in which he has a "personal interest," as defined by section 32. You question whether this prohibition would bar you from presenting information to a committee which was considering a measure affecting an enterprise from which you received income. If the measure is one in which a legislator has a "personal interest" as defined above, the bill prohibits participation "by voting or any other action," on the floor, in committee or elsewhere in its enactment or defeat. This prohibition, while not precisely defined, is broadly drawn, to bar any action by a legis-

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lator to promote the enactment or defeat of legislation in which he has a "personal interest."

Lastly, you inquired concerning the interpretation of § 54, which requires every lobbyist to file a report of employment and expenditures with the secretary of state. Specifically, § 54(1)(2) requires the lobbyist to report

"the full name and address of each vendor or other person to whom any payment is made by the lobbyist or by his employer for or in relation to lobbying during the reporting period in an aggregate amount or value in excess of ten dollars (\$10) to any one vendor or other person, showing the amount to each"

You question "whether a lobbyist has to disclose all the expenditure of \$10 or more that even his employer has expended for the purpose of influencing legislation." That is a correct statement of the reporting requirement of the bill. You question how a lobbyist may be able to obtain information regarding the expenditures of his employer to which he is not privileged. This reporting requirement is the vehicle whereby all sums expended in the course of lobbying, as defined by section 11, are required to be disclosed. The burden of reporting falls upon the lobbyist. It is doubtless incumbent upon the employer to assure that the lobbyist has access to all information necessary to enable the employee-lobbyist to fulfill his statutory responsibilities under the act.

If you should have further questions, please do not hesitate to call upon us.

Yours very truly,



VERN MILLER
Attorney General

VM:JRM:jsm