



STATE OF KANSAS

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April 2, 1975

Opinion No. 75-150

The Honorable Elwill M. Shanahan
Secretary of State
Second Floor, Statehouse
Topeka, Kansas 66612

Dear Secretary Shanahan:

K.S.A. 25-901 states thus:

"Every committee, club, organization, municipality or association designed to promote or engaged in promoting the success or defeat of any party or the election or defeat of any candidate or candidates to political office, or the adoption or defeat of any proposed constitutional amendment or other question submitted at any election, shall have a treasurer, and shall cause to be kept a detailed account of all moneys or property or other thing of value received by it, and of the manner in which the same shall be expended; and shall file annually with the county election officer of the county in which such committee, club, organization or association has its headquarters, and in case the election or defeat of any candidate for state office or of a constitutional amendment was involved shall also file with the secretary of state a statement of all its receipts and expenditures, showing in detail from whom said moneys or property or other things of value were received, to whom said moneys or property or other thing of value were paid, for what specific purposes each payment was made, and the exact nature of the service rendered in consideration thereof.

The annual statement herein required shall be filed on or before December 31, such statement shall cover the period ending on December 1 immediately preceding. The accounts of the state committee of each political party shall be audited annually by a certified public accountant and a copy of the audit filed with the secretary of state."

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K.S.A. 25-4102(g), of the 1974 Campaign Finance Act, K.S.A. 25-4101 et seq., defines "party committee" as

"the state committee of a political party regulated by article 3 of chapter 25 of the Kansas Statutes Annotated, or by the county central committee or the state committee of a political party regulated under article 39 of chapter 25 of the Kansas Statutes Annotated or the bona fide national organization or committee of those political parties regulated by the Kansas Statutes Annotated."

K.S.A. 25-4135 states thus:

"The provisions of K.S.A. 25-901 to 25-905, inclusive, shall not apply to elections to which this act applies."

You inquire whether "a state committee or any other committee designated in [K.S.A.] 25-901 is required to file an annual statement and a copy of the annual audit with the secretary of state."

The title of the 1974 Campaign Finance Act, found at ch. 166, L. 1974, is as follows:

"An Act concerning elections; reporting contributions and expenditures and other financial information; making certain acts unlawful and prescribing penalties; amending K.S.A. 25-2505 and repealing the existing section."

Nothing in the title suggests that any statute other than K.S.A. 25-2505 is amended or repealed by the new enactment. Yet, section 37 of the act, quoted above as K.S.A. 25-4135 effectively amends K.S.A. 25-901 et seq., substantially restricting the scope of its application.

Article 2, § 16 of the Kansas Constitution provides in pertinent part that

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"no law shall be revived or amended, unless the new act contain the entire act revived or the section or sections amended, and the section or sections so amended shall be repealed."

In *Cunningham v. Smith*, 143 Kan. 267, 53 P.2d 870 (1936), there was challenged the constitutionality of ch. 186, L. 1933, the title and section one of which provided thus:

"An Act relating to fees and salaries of certain county officers, employees and other persons therein named, for the time, term and emergency herein provided,

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Section 1. In lieu of the fees and/or salaries heretofore paid certain county officers and employees during the period commencing April first, 1933, and ending March thirty-first, 1935, there shall be paid to or collected by said officers and employees, the fees and/or salaries set forth and provided for in this act."

The court described the enactment thus:

"The act does not purport to amend or repeal prior existing statutes with respect to the fees and salaries of county officers and the amounts to be charged by them for their services. Generally speaking, it reduced the compensation of county officers for the time the act was to be in effect from that provided by the general statutes. . . relating to fees and salaries."

The act was urged to be unconstitutional and in violation of the requirements of Article 16, § 2 cited above. The court stated thus:

"It is argued that since the act. . . does not specifically repeal previous existing sections of the statute relating to fees and salaries it fails to comply with the above-quoted section of our constitution and is therefore invalid. The point is not well taken. Statutes may be repealed by implication. . . Such repeals do not come within the purview of section 16 of article 2 of our

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constitution. . .But we do not predicate our decision upon the doctrine of repeal by implication. The statute in question was not intended or designed to repeal existing statutes on fees and salaries, or any other statute. It was enacted as a temporary measure for 'a term and emergency herein provided' (as the title states) and for a time 'commencing April 1, 1933, and ending March 31, 1935,' . . . Its purpose was to supersede for the time stated the general statute relating to the subject covered by the act, and was not designed to repeal it. The section of the constitution above quoted does not prohibit that class of legislation." 143 Kan. at 269-270.

The suspension of a statute differs, of course, from amendment or repeal. In *Cunningham*, the court spoke thus:

"The time a statute is in force may be limited at the time it is enacted by fixing a date, event or circumstance for its termination. . . , and when the time so limited expires it ceases to operate. . . When an act expires by its own limitations the effect is the same as though it had been repealed at that time. . . In *Cassell, Etc. v. L., H. & P.T.R. Co.*, . . . 9 S.W. 502, it was held that the repeal of a suspending act forthwith restores the operation of the suspended act. The suspended act, of course, is not repealed."

In short, to suspend a statute is to abate its application for a given period, whether the period of the suspension is determined by a fixed date, or the occurrence of an event or circumstance. To suspend a statute permanently is to repeal it, and to restrict the application of a statute permanently is effectively to amend the statute.

K.S.A. 25-4135, enacted as § 37 of the 1974 Campaign Finance Act, does not suspend K.S.A. 25-901; on the contrary, it purports permanently to remove certain organizations, associations and the like from its coverage, substantially and effectively amending K.S.A. 25-901 through -905.

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Article 2, § 16 does not apply to repeals by implication. Section 37, now appearing as K.S.A. 25-4135, does not alter K.S.A. 25-901 et seq., merely by implication: it does so expressly, directing that the latter statutes will not apply according to their terms. The amendment is express, not implied. In *Cunningham, supra*, the Court held that art. 2, §16 also does not apply to the suspension of a statute. K.S.A. 25-4135 does not merely suspend K.S.A. 25-901 et seq., in its application to certain organizations, associations and the like, but permanently excepts them from it. K.S.A. 25-4135 thus effectively and substantially amends K.S.A. 25-901 et seq. Yet, the title of the enactment of which it is a part, see ch. 166, L. 1974, does not contain the recitals required by art. 2, § 16 of the Kansas Constitution.

This section of the constitution was amended by a vote of the people at the recent general election. So far as pertinent here, there was added the following provision:

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

This language has not yet been construed by the Kansas Supreme Court. Whatever latitude of construction it may be found to warrant, we think it has no application here. The constitutional sufficiency of the title must be measured, in our view, by the plain requirements of the section. Section 37 of the 1974 Campaign Finance Act effectively and substantially amends K.S.A. 25-901 through -905. The title does not so reflect. Accordingly, it is our conclusion that said section, now appearing as K.S.A. 25-4135, is invalid and ineffective, and that K.S.A. 25-901 through -905 remain in full force and effect, unless and until it is amended or repealed by an enactment of the legislature bearing a constitutionally descriptive title.

We should point out that this conclusion does not affect the continuing validity of any other section of the 1974 Campaign Finance Act. See K.S.A. 25-4134.

Yours very truly,



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Attorney General