



STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

CURT T. SCHNEIDER
Attorney General

April 15, 1975

Opinion No. 75- 160

Mr. James R. Cobler, Director
Division of Accounts and Reports
Department of Administration
2nd Floor - State Office Building
Topeka, Kansas 66612

Dear Mr. Cobler:

You inquire concerning a directive dated April 10, 1975, from Governor Robert Bennett, addressed to yourself, as Director of Accounts and Reports, in which the Governor purportedly authorizes and directs the payment of compensation to sixteen persons named therein appointed by him to various boards, commissions and agencies of the state on March 26, 1975.

As you are aware, this office has officially advised the Governor that in our opinion, a valid executive appointment to any of the positions in question does not require the consent of the Kansas Senate, and that disapproval by that body does not terminate any existing valid appointment. The Governor has publicly disagreed with that opinion. It is regrettable, however, that he would press his disagreement so as to jeopardize public funds.

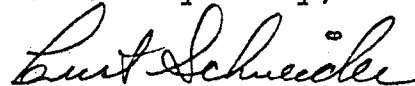
On April 10, 1975, the date of the governor's directive to you, an original action in quo warranto was filed with the Kansas Supreme Court, styled Leek v. Theis, no. 47885, in which case the questions to be presented to the court will most likely be determinative of the right to office of most, if not all, of those eighteen persons appointed by Governor Bennett on March 25, 1975. In view of this pending litigation, it is our opinion that there exists no adequate and independent basis upon which you may determine the conflicting claims to office of Ms. Leek and Mr. Theis, parties to the case, or of others similarly situated, so as to provide a basis upon which to pay any of the claimants to the offices in question. Accordingly, it is our opinion that no claims to compensation should be paid to any of the appointees named in the letter of Governor Bennett to yourself unless and until the cited pending litigation

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is decided by the Kansas Supreme Court. If payment were made as directed by the Governor, and the persons so paid were found to have no title to the offices in question, the state would be faced both with claims for compensation from the persons held to have been lawfully appointed, and with the question of recovering such funds from those improperly paid. In this regard, the directive reflects neither proper concern for the integrity of the treasury, nor due regard for the pending conflicting claims to the offices, and emoluments thereof, presently before the Kansas Supreme Court.

If necessary, this office will take further legal action to assure that no claims for compensation or other allowances are paid to any of the thirty-four persons named in the directive of Governor Bennett, until pending litigation is finally determined.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj



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CURT T. SCHNEIDER
Attorney General

April 16, 1975

To Affected State Agencies:

I have been furnished with a copy of Bennett Executive Order No. 4, directing that all appointments made by Governor Robert Docking which were summarily rejected by the Kansas Senate on March 26, 1975, "are not to be recognized from and after the date of such non-confirmation," and that those persons appointed by Governor Bennett to fill the purported vacancies resulting from that Senate action "should be recognized and seated for the position for which they were appointed and that they should have all the emoluments of such office. . . ."

The questions which are most likely determinative of the claims to office of the persons named in this executive order have been raised in the case of Leek v. Theis, filed in the Kansas Supreme Court on April 10, 1975. Indeed, public funds in the budget of the governor's office were directed to be used by Bennett Executive Order No. 3 to pay the costs of counsel for the plaintiff in that case. Apparently, the Governor now refuses to await an orderly judicial determination of the questions involved.

We have advised Mr. James Cobler, Director of Accounts and Reports, that no compensation or other allowances should be paid to any of the thirty-six persons whose title to office is presently in question.

In addition, as Attorney General, it is my official opinion that no agency should take any official action to recognize the title to office of any person whose claims will be, or will most probably be, determined by pending litigation before the Kansas Supreme Court.

The executive order issued by Governor Bennett is stated to be based on Article 1, § 3 of the Kansas Constitution, under which it is his duty to "see that the laws are faithfully executed." This

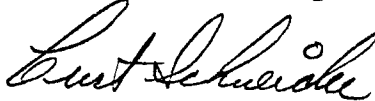
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executive power does not include the power and authority to determine contested claims to office.

Yours very truly,

A handwritten signature in cursive script, appearing to read "Curt Schneider".

CURT T. SCHNEIDER
Attorney General

CTS:kj