



STATE OF KANSAS

Office of the Attorney General

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

Curt T. Schneider
Attorney General

February 16, 1976

ATTORNEY GENERAL OPINION NO. 76- 56

The Honorable Lynn W. Whiteside
State Representative
3rd Floor - State Capitol
Topeka, Kansas 66612

Re: Elections--H.B. 2731--Contribution Restrictions

Synopsis: Section 1 of H.B. 2731 may affect the ability of certain associational organizations of persons joined together for common purposes of political expression and communication to serve the purposes for which they were organized, and if so, the procedural requirements of the section may be open to the most serious constitutional First Amendment objections.

* * *

Dear Representative Whiteside:

You inquire concerning 1976 House Bill 2731, and changes therein which may be required to conform to the decision of the United States Supreme Court in *Buckley v. Valeo*, announced January 30, 1976.

Section 1 of the bill provides that "no person other than an individual or party committee shall make any contribution to any candidate or candidate committee," and no candidate or candidate committee shall accept any contribution from other than an individual or party committee unless

"(1) each individual who makes a contribution to such person designated in writing the candidate who is the intended recipient, (2) the

contribution is identified in writing as to the individual contributor and (3) the records thereof are maintained available for audit."

K.S.A. 1975 Supp. 25-4102(h) defines "person" as "any individual, committee, corporation, partnership, trust, organization or association." Section one would prohibit any "person," other than an individual or party committee, as defined by K.S.A. 1975 Supp. 25-4102(g), from making contributions to candidates or candidate committees, except under certain conditions. In effect, it would prohibit every corporation, partnership, trust, organization, association or committee other than a party committee from making a contribution to any candidate or candidate committee from the funds of the corporation, partnership, trust, organization, association, or committee, and require that any contribution made to a candidate or candidate committee by any such entity be made as an agent of individuals, who must designate in writing the candidate who is the intended recipient, and "the contribution is identified in writing as to the individual contributor."

In *Buckley*, the Court recognized that regulation of political contributions "operates in an area of the most fundamental First Amendment activities:"

"A restriction on the amount of money a person or group can spend on political communication during a campaign necessarily reduced the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached."

Rights of political association as well as political expression are also protected:

"The First Amendment protects political association as well as political expression. The constitutional right of association explicated in *NAACP v. Alabama*, 357 U.S. 449, 460 (1958), stemmed from the Court's recognition that '[e]ffective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association.' Subsequent decisions have made clear that the First and Fourteenth Amendments guarantee 'freedom to associate with others for the common advancement of political beliefs and

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ideas,' a freedom that encompasses '[t]he right to associate with the political party of one's choice.'" [Citations omitted.]

The Court upheld certain of the limitations in the Federal Election Campaign Act as directly related to the prevention of both the reality and the appearance of corrupt and coercive influence stemming from candidates' dependence on large financial contributions. The Court found those ceilings which it upheld served a basic governmental interest in protecting the integrity of the electoral process without directly impinging on First Amendment rights.

Section 1 imposes two substantive and two procedural conditions upon the making of contributions by such associational groups. First, such groups may not contribute their own funds to candidates or candidate committees; secondly, they may contribute only as agents, funds which it receives from individuals; third, each individual making a contribution to the associational group must designate in writing the candidate who is the intended recipient; and the contribution must be identified in writing as to the individual contributor.

It is not clear what purpose this section is designed to serve. Every "person" as defined by K.S.A. 1975 Supp. 25-4102(h), to which it applies, is already subject to the spending limitations and reporting requirements of the act. By its terms, section 1 applies only to groups, associations, organizations, committees and the like, many of which may be associations of individuals joined together for the common purpose of political expression and political communication. The rights of such associational organizations to engage in political expression are clearly protected by the First Amendment, subject to regulation which serves directly to protect the integrity of the electoral process.

It is apparently suggested that the substantive and procedural requirements of section 1 are so burdensome and onerous that large associational groups, including particularly political action committees of various professional, commercial and labor organizations, will be unable to comply with the procedural requirements and will be forced to disband or, at the least, will be effectively foreclosed from making contributions to candidates. In *Buckley*, the Court stated thus:

"We have long recognized that significant encroachment on First Amendment rights of the sort that compelled disclosure imposes cannot be justified by a mere showing of some legitimate governmental interest. Since *Alabama* we have

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required that the subordinating interests of the State must survive exacting scrutiny. We also have insisted that there be a 'relevant correlation' or 'substantial relation' between the governmental interest and the information required to be disclosed This type of scrutiny is necessary even if any deterrent effect on the exercise of First Amendment rights arises, not through direct governmental action, but indirectly as an unintended but inevitable result of the government's conduct in requiring disclosure." [Citations and footnotes omitted.]

If in fact section 1 will have the drastic consequences envisioned by some, *i.e.*, if it will effectively foreclose large associational organizations from acting as a vehicle for political expression and communication, including the making of contributions, for and on behalf of their members, obviously the section cannot be sustained unless it is shown to have a direct and compelling relationship to the permissible governmental interest of protecting the integrity of the electoral process. Existing contribution limitations operate effectively to implement the purpose of the existing Campaign Finance Act to dispel both the reality and appearance of coercive influence of large contributions.

In *Buckley*, the Court identified three governmental interests sought to be vindicated by disclosure requirements:

"First, disclosure provides the electorate with information 'as to where political campaign money comes from and how it is spent by the candidate' in order to aid the voters in evaluating those who seek Federal office. . . .

Second, disclosure requirements deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity. . . .

Third, and not least significant, record-keeping, reporting and disclosure requirements are an essential means of gathering the data necessary to detect violations of the contribution limitations described above."

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Clearly, these governmental interests are served by existing disclosure requirements, and it is difficult to see how any one of them is further served by either the substantive or procedural requirements of section 1.

Clearly, relatively small associational groups may have no difficulty in complying with the requirements of section 1. A group with a membership of ten or twenty individuals, *e.g.*, may find it relatively easy to obtain the written designations from its members. Larger groups, with membership numbering the hundreds or perhaps thousands, may find it virtually impossible to do so, and thus would be prohibited from making contributions to candidates or candidate committees, merely because of physical inability to comply with the procedural requirements imposed by section 1(b). If that is indeed the foreseeable likely consequence of implementation of section 1, it is my opinion that it is open to the most serious constitutional objection as a curtailment of protected First Amendment rights of political association, and that the additional requirements sought to be imposed by section 1 would be most difficult to justify in terms of the permissible governmental interests sanctioned by *Buckley*, as identified above.

Section 2 proposes to amend K.S.A. 1975 Supp. 25-4112, which provides aggregate limitations upon amounts contributed to a candidate or candidate committee and dedicated to a particular candidate's campaign by any person except a party committee, imposing lower aggregate contribution limitations than are provided by the present section. Aggregate contribution limitations were upheld in *Buckley*, and nothing in section 2 or the remaining sections of the bill appear objectionable.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj