



STATE OF KANSAS

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Curt T. Schneider,
Attorney General

April 13, 1977

ATTORNEY GENERAL OPINION NO. 77-121

The Honorable John H. Reimer
State Representative
712 South 35th
Parsons, Kansas 67357

Re: Insurance--Agents--Licensing

Synopsis: The education requirements of K.S.A. 1976 Supp. 40-240a are not on their face arbitrary, capricious or unreasonable, so as to constitute an unconstitutional classification of agents to which such requirements apply.

* * *

Dear Representative Reimer:

K.S.A. 1976 Supp. 40-240a *et seq.* prescribes minimum education requirements which are applicable to all persons "engaging as agents in the sale of life insurance, including health and accident insurance," except those who have held a license for twenty years prior to the effective date of the act, July 1, 1976. You question whether the act is unconstitutionally discriminatory because it is not applicable to agents engaging in the sale of other lines of insurance and because it exempts from its provisions agents who have held licenses for twenty years prior to July 1, 1976.

The act is not necessarily unconstitutionally discriminatory merely because it applies only to agents of life, health and accident insurance, and not to agents of other lines of insurance. In *Gilbert v. Mathews*, 186 Kan. 672, 352 P.2d 58 (1960), the court stated thus:

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"While the police power is wide in its scope and gives the legislature broad power to enact laws to promote the health, morals, security and welfare of the people, and further, that a large discretion is vested in it to determine for itself what is deleterious to health, morals or is inimical to public welfare, it cannot under the guise of the police power enact unequal, unreasonable and oppressive legislation or that which is in violation of the fundamental law. . . .

When once a subject is found to be within the scope of the state's police power the only limitations upon the exercise of the power are that regulations must have reference in fact to the welfare of society and must be fairly designed to protect the public against the evils which might otherwise occur. Within these limits the legislature is the sole judge of the nature and extent of the measures necessary to accomplish its purpose." 186 Kan. 677.

If the legislature in its wisdom found that the public welfare would be served by prescribing minimum education requirements for agents of life, health and accident insurance, it could enact legislation toward that end, without prescribing similar requirements for agents of other lines of insurance, if, once again, the legislature found no need or justification for extending those requirements to other agents. A legislative classification will be upheld if it bears a reasonable relationship to a permissible legislative purpose. If the legislature found, from hearings and investigations conducted by its committees, that there existed a need for increased educational requirements for agents of specific lines of insurance, it could so provide, without extending those requirements to agents of other lines, concerning whom the legislature had found no such need. I cannot conclude purely as a matter of law that this classification is arbitrary or unreasonable. A court which has the power to hear arguments and receive evidence could after receiving testimony and appropriate evidence, make an informed judgment whether the classification is indeed reasonable. However, that determination must be made on the basis not of legal questions alone, but of factual information which the court must weigh, prior to reaching its decision.

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The requirements of K.S.A. 1976 Supp. 40-240a et seq., are not facially discriminatory, in my judgment, and I cannot conclude purely as a matter of law that the exclusions therefrom are arbitrary, unreasonable or capricious.

If, of course, a court were to find the act unconstitutionally discriminatory, the shape of any remedial legislation would necessarily be determined by the specific defects which the court noted in its ruling.

Yours truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj