



STATE OF KANSAS

## Office of the Attorney General

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

Curt T. Schneider  
Attorney General

May 3, 1977

ATTORNEY GENERAL OPINION NO. 77- 151

Mr. Leonard O. Thomas  
Chairman  
Governmental Ethics Commission  
109 West Ninth  
Topeka, Kansas 66612

Re: Campaign Finance Act--Complaints--Jurisdiction

Synopsis: The Governmental Ethics Commission has no jurisdiction under the Campaign Finance Act, K.S.A. 1976 Supp. 25-4101 et seq. to entertain a complaint against any person other than a person to whom the Campaign Finance Act applies, and principles of criminal responsibility may not be relied upon to enlarge its administrative jurisdiction to persons other than those upon whom the Act imposes duties and responsibilities.

\* \* \*

Dear Mr. Thomas:

You inquire whether, if information is brought forward to the Commission that an individual has aided, abetted, hired, counseled or procured another to commit a violation of the Campaign Finance Act, the Commission has jurisdiction to hear and determine such a complaint.

K.S.A. 1976 Supp. 25-4121 describes the nature of complaints which the Commission is empowered to entertain. It may hear any "verified complaint in writing stating the name of any person to whom or to which this act applies who is alleged to have violated any provision of this act . . . ." If a complaint does not "allege

Mr. Leonard O. Thomas  
Page Two  
May 3, 1977

facts . . . sufficient to constitute a violation of any provision of this act," it shall dismiss the complaint. If the Commission finds probable cause to believe the allegations of a complaint which does allege a violation of a provision of the act, it may proceed to a public hearing on the matter, after which it must render its findings of fact

"If the commission finds that the respondent has not violated any provisions of this act, it shall order the action dismissed, and shall notify the respondent and complainant thereof. If the commission finds that the respondent has violated any provisions of this act, it shall state its findings of fact and submit a report thereon to the attorney general and to the county or district attorney of the appropriate county."

The investigative processes of the Commission thus provide a device whereby alleged violations may be explored, persons responsible therefor may be identified, and the pertinent information respecting such violations may be forwarded to the appropriate prosecuting attorneys. The administrative processes of the Commission are those expressly granted by statute, and the Commission has no jurisdiction to pursue a complaint against persons to whom the Act does not apply.

As you point out, generally under the Campaign Finance Act persons responsible for various duties are the treasurers of party, political and candidate committees, although certain provisions impose duties upon others. E.g., K.S.A. 1976 Supp. 25-4103 requires the candidate to appoint a treasurer or a candidate committee, and intentional failure to do so is a misdemeanor under K.S.A. 1976 Supp. 25-4133. K.S.A. 1976 Supp. 25-4104 requires the chairman of each party or political committee to file a statement of organization, and once again, intentional failure to do so is a misdemeanor under K.S.A. 1976 Supp. 25-4133. K.S.A. 1976 Supp. 25-4105 requires that a candidate or committee who has removed its treasurer to appoint a successor treasurer, and prohibits the receipt or expenditure of a contribution until the candidate appoints a treasurer, and the receipt or expenditure is made by or through the treasurer. Similarly, party or political committees may not receive contributions or make expenditures until the chairman has filed a statement of organization, and unless

Mr. Leonard O. Thomas  
Page Three  
May 3, 1977

the receipt or expenditure is done through the treasurer. Failure in any such duty is also a misdemeanor under K.S.A. 1976 Supp. 25-4133. K.S.A. 1976 Supp. 25-4107 requires the treasurer to refuse contributions unless certain conditions are met, and intentional violation of that section is also a misdemeanor under K.S.A. 1976 Supp. 25-4133. K.S.A. 1976 Supp. 25-4111 requires the candidate or treasurer, as the circumstances require, to verify reports to the Commission; requires the preservation of records by the person filing the report, and forbids the treasurer to accept or permit any contributions or expenditures to be made without all reports prior thereto having been filed; once again, intentional violation of any of these requirements is a misdemeanor under K.S.A. 1976 Supp. 25-4133. K.S.A. 1976 Supp. 25-4113 imposes certain restrictions upon the making or acceptance of contributions, and K.S.A. 1976 Supp. 25-4126 imposes a duty of confidentiality respecting records of the Commission. Intentional breach of either of these sections is also a misdemeanor under K.S.A. 1976 Supp. 25-4133.

In addition, K.S.A. 1976 Supp. 25-4128 through -4141 prescribe separate criminal offenses, including failure to file a campaign finance report, and fraudulent campaign finance reporting. The duty to file such reports, and responsibility for their correctness, rests in most all instances, as you indicate, with the treasurers of the various party, political and candidate committees.

To use the reporting requirements of the act as a basis for discussion, the question is whether the Commission has jurisdiction to entertain a complaint against a person other than treasurer as the person responsible for the report under the Act, on the ground that such other person aided, abetted, counseled, advised or procured the treasurer to commit a violation of the Act.

In terms of principles of criminal responsibility, it may be that a person who aids, abets, advises, counsels or procures a violation of the reporting requirements of the Act, e.g., may be subject to prosecution. In United States v. Giles, 300 U.S. 41, 81 L.Ed. 493 (1937), the Court considered a conviction under 12 U.S.C.A. § 592, which provided in pertinent part thus:

"Any officer, . . . who makes any false entry in any book report, or statement of such Federal reserve bank . . . with intent in any case to injure or defraud . . . or to deceive . . . shall be deemed guilty of a misdemeanor . . . ."

Mr. Leonard O. Thomas  
Page Four  
May 3, 1977

The evidence disclosed that the defendant, a paying and receiving teller, had withheld deposit slips and tickets from the bank's bookkeepers, with the result that the individual ledger accounts of the bank understated the bank's liability. The question was raised whether the defendant was liable to a charge of causing the false entries to be made, in view of his admitted acts only of withholding deposit slips and tickets from the bookkeeping staff, with the admitted purpose of concealing shortages. The Court stated thus:

"The rule . . . that criminal statutes must be strictly construed, does not require that the words of an enactment be given their narrowest meaning or that the lawmaker's evident intent be disregarded. . . . Here the purpose to insure the correctness of bank records by prescribing punishment for any employee who, with intent to deceive, etc., deliberately brings about their falsification is plain enough. The statute denounces as criminal one who, with intent, etc. 'makes any false entry.' The word 'make' has many meanings, among them 'To cause to exist, appear or occur.' Webster's Int. Dict. 2d ed. To hold the statute broad enough to include deliberate action from which a false entry by an innocent intermediary necessarily follows, gives to the words employed their fair meaning and is in accord with the evident intent of Congress. To hold that it applies only when the accused personally writes the false entry or affirmatively directs another so to do would emasculate the statute -- defeat the very end in view."

Thus, it may be argued that one who e.g., intentionally furnishes false and material information to a campaign treasurer, for the purpose of causing such information to be included in a report submitted to the Governmental Ethics Commission, may be deemed to have made or caused to be made the false material statement, although that person be someone other than the treasurer.

To some extent, the principles of Giles is incorporated in the Kansas Criminal Code. Under principles of criminal responsibility incorporated therein, persons other than the actor may be criminally liable. K.S.A. 21-3205(1) states thus:

Mr. Leonard E. Thomas  
Page Five  
May 3, 1977

"(1) A person is criminally responsible for a crime committed by another if he intentionally aids, abets, advises, hires, counsels or procures the other to commit the crime."

A person liable under this subsection may be charged and convicted although the person alleged to have directly committed the act constituting the crime lacked criminal capacity. K.S.A. 21-3205(3).

Under K.S.A. 21-3102, the Kansas criminal code applies to crimes created by statutes other than in the code itself "[u]nless expressly stated otherwise, or the context otherwise requires . . . ." In Giles, the Court pointed out that the restrictive construction urged by the defendant would effectively emasculate the statute and defeat the clear congressional purpose. There is no such compelling policy argument here. Disclosure is a key element of the Campaign Finance Act, and the duties of the filing of reports, and responsibility for the correctness of those reports, rests squarely on the treasurers of the respective party, political and candidate committees, and the attribution of criminal responsibility to a person other than the treasurer, in the instance of a violation of the reporting requirements of the act, e.g., is not necessary to preserve the integrity of the regulatory and disclosure purposes of the act.

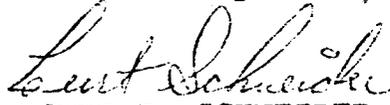
To respond to your question, however, it is unnecessary to resolve the question whether the principles of criminal responsibility apply to offenses created by the Campaign Finance Act. The Commission is an administrative body, and its powers are solely those granted by statute. The administrative hearing process of the Commission does not include the fixing of criminal liability, and principles of criminal responsibility which may be applicable to criminal prosecutions may not be relied upon to enlarge the jurisdiction of the Commission. Although findings of fact which emerge from the administrative hearing processes of the Commission may lead to criminal prosecutions, its administrative jurisdiction is not coextensive with that of the prosecuting attorney.

It is empowered to hear complaints identifying as respondent any "person to whom or to which this act applies [and] who is alleged to have violated any provision of this act. . . ." In the instance of offenses involving reporting for example, the act applies to those upon whom it imposes duties, and in nearly every provision of the act regarding the making and filing of reports, those persons are the treasurers of party, political or candidate committees. The treasurer is subject to the jurisdiction of the Commission because the act manifestly applies to the treasurer and imposes

Mr. Leonard E. Thomas  
Page Six  
May 3, 1977

broad duties and responsibilities upon the treasurer respecting the reports which that person is required to file. A complaint which alleges a violation of the act e.g., involving a violation of its reporting and disclosure requirements, by a person who is not responsible under the act for any such required report or the correctness thereof, does not identify "any person . . . to whom . . . this act [the Campaign Finance Act] applies," and thus does not vest jurisdiction in the Commission to proceed upon that complaint.

Yours truly,



CURT T. SCHNEIDER  
Attorney General

CTS:JRM:kj