



STATE OF KANSAS

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March 1, 1978

ATTORNEY GENERAL OPINION NO. 78- 100

The Honorable Jim C. Slattery
State Representative
3rd Floor - State Capitol
Topeka, Kansas 66612

Re: State Legislation--Constitutionality--Subject of Bill

Synopsis: 1977 House Bill 3095 does not contain provisions relating to more than one subject in violation of Article 2, § 16 of the Kansas Constitution.

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Dear Representative Slattery:

In 1974, a substantial revision of Article 2 of the Kansas Constitution was approved by the voters. Section 16 thereof was amended to provide in pertinent part thus:

"No bill shall contain more than one subject, except appropriation bills and bills for revision or codification of statutes. The subject of each bill shall be expressed in its title The provisions of this section shall be liberally construed to effectuate the acts of the legislature."

You inquire concerning application of the foregoing to 1978 House Bill 3095, as amended by House Committee. The title thereof states thus:

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"AN ACT relating to taxation; concerning the disposition of certain state-collected revenues; providing for the allocation and distribution of a portion of the retailer's sales and compensation tax revenues to counties and cities; prescribing a limitation upon the levy of taxes upon tangible property by certain taxing subdivisions; exempting certain tax levies from such limitation and prescribing a procedure for and conditions under which taxes may be levied in excess of such limitations; granting certain authority and prescribing certain duties of the state board of tax appeals"

You inquire whether the bill includes more than the one subject permitted by Article 2, § 16. Section 1 of the bill amends an existing statute creating the local ad valorem tax reduction fund, increasing the percent of the total retail sales and compensating taxes received by the state to be deposited therein. Sections 2 through 18 constitute a new enactment, in effect revising and reenacting the aggregate levy limitations commonly known as the "tax lid" applicable to cities and counties. Sections 19 through 23 provide for the creation of a city and county revenue fund, for the deposit therein of a prescribed percentage of the total retail sales and compensating taxes deposited in the state treasury, and for allocation of that portion among the cities and counties of the state on a prescribed basis, and for abolition of the county and city alcoholic liquor control enforcement fund. Section 24 provides for abolition of the cigarette tax fund, likewise, by transfer of the moneys therein to the state general fund.

Concerning the prohibition against multiple subjects in a single bill, in *Shrout v. Rinker*, 148 Kan. 820, 84 P.2d 972 (1938), the court stated thus:

"The reason for the constitutional provision that an act shall not contain more than one subject, which shall be clearly expressed in its title, is to prevent two or more unrelated subjects being covered in an act so that members of the legislature would feel that they should vote for a bill which contained a provision to which they were opposed in order to secure the enactment of the bill with some provisions they considered important." 148 Kan. at 822.

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Identification of the subject of an act may be a troublesome task, however. In *State ex rel. Hopkins v. Howat*, 109 Kan. 376, 198 Pac. 686 (1921), Justice Burch responded thus to an argument that the act creating the court of industrial relations included multiple subjects:

"In a certain sense, the act embraces two subjects: regulation of public utilities, and regulation of those industries which have to do with supplying the people with necessities of life. In the same sense, the second subject is doubly triple. It embraces food, clothing, and fuel, and it embraces production, manufacture, and distribution. According to the same method, the act might be conceived as divided into as many subjects as a carefully prepared index of its contents would disclose. That, however, is not the method by which to determine the scope of a statute. The question in any case is, Are the particulars so diverse that they may not be connoted in a single generic concept? In this instance the general concept is enterprise affected with a public interest, and the grouping is not only natural, but consistent and harmonious."

In *City of Wichita v. Sedgwick County*, 110 Kan. 471, 204 Pac. 693 (1922), the court observed as follows:

"Look at the general act of 1876 relating to public education Its title is, 'An act for the regulation and support of common schools.' Under this simple title there lies the entire statutory foundation of our public-school system, covering not only such matters as schools and school districts, and school officers and their duties, but matters so distantly related thereto as the disposition of the federal land grants for school purposes, and including such details as the mode of settlement and acquisition of school lands, duties of the state auditor and governor in relation to the issue of land patents, criminal proceedings and penalties for waste or trespass on school-

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land properties, etc. But though the title to this act gives no hint of these far-reaching details, yet because they are mere details of the general scheme of the act for the effective regulation and support of common schools, and are germane and pertinent to the principal purpose of the act, they are not subject to the constitutional infirmity under section 16 of article 2."

If the several provisions of the act have a "definite relation to one another, are germane to the general purpose, and do not constitute separable, incongruous, independent or unrelated matters," the requirements of Article 2, § 16 are satisfied.

It is difficult to argue that the bill in its entirety relates to taxation. Assuredly, sections 2 through 18 deal specifically with that subject, imposing limitations upon the levy of ad valorem property taxes by cities and counties. Sections 19 through 24 do not relate in any fashion to the levy and collection of taxes by either the cities or counties, or by the state itself. Rather, they deal exclusively with the allocation of certain state revenues to cities and counties. It may be argued that the provisions providing for allocation of state revenues to cities and counties are related to the aggregate levy limitations of sections 2 through 18, in that the former provisions, by furnishing additional funds to cities and counties, are intended to compensate for the restrictions on local ad valorem property taxing authority. This argument is necessarily mere conjecture, however, for there is nothing in the bill itself which indicates that this is a legislative purpose of the bill, or that the allocation of moneys from the proposed city and county revenue fund in any way based upon or affected by the restrictive effect of the aggregate levy limitations upon any city or county.

However, the two portions of the bill do relate to a common subject, the financing of city and county government, first, by imposing limitations upon the ad valorem taxing authority of cities and counties, and secondly, by providing additional and alternative revenues to them from certain state-collected revenues. Defining the subject of the bill thus, all provisions of the bill are "germane" to that general subject, and none deal with independent or unrelated matters. Article 2, § 16, was amended in 1974 to require that it be "liberally construed to effectuate the acts of the legislature." The Kansas Supreme Court has consistently

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reiterated its duty to uphold the validity of a statute against constitutional challenges whenever possible, and stated and restated a strong presumption of validity in considering such challenges, and it is doubtful whether this additional rule of construction embedded in the state constitution alters the applicability of precedents established under the section prior to amendment. In my judgment, defining the subject of the bill thus, the bill contains but one subject, provisions relating to and dealing with the financing of city and county governments, and does not violate Article 2, § 16.

Yours truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj