



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

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MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
ANTITRUST: 296-5299

ATTORNEY GENERAL OPINION NO. 80-51

The Honorable Nancy Parrish
State Senator, Nineteenth District
126-S, State Capitol
Topeka, Kansas 66612

Re: State Departments; Public Officers,
Employees--Public Officers and Employees--
Public Employee Organizations; Recog-
nition and Certification

Synopsis: A bylaw of a "public employee organization," which bylaw requires continuous membership for the preceding year as a prerequisite to eligibility for "legal representation," does not violate the requirement of "fair and equal treatment of all members" set forth in subsection (h) of K.S.A. 75-4327.

* * *

Dear Senator Parrish:

You request our opinion as to whether a policy of the Kansas Association of Public Employees (KAPE) concerning "legal representation" for members is in conflict with requirements of "fair and equal treatment" set forth in K.S.A. 75-4327(h). As stated in your letter, a bylaw of KAPE provides that:

"Members in good standing shall be eligible to vote and to hold office. They are eligible to receive all benefits and services provided by KAPE. To be eligible for legal representation, membership must have been continuous for the preceding year." (Emphasis added.)

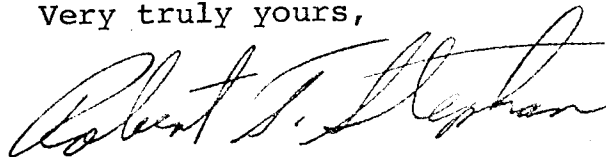
We are advised that, as interpreted by KAPE, "legal representation" means legal counseling as to job-related problems, including representation in hearings before the Kansas Civil Service Board.

K.S.A. 75-4321 et seq. establishes the "Kansas Public Employee Relations Board" and prescribes procedures for the recognition and certification of "public employee organizations." Subsection (h) of K.S.A. 75-4327 provides, in part, that:

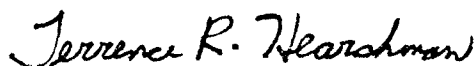
"No employee organization shall be recognized unless it establishes and maintains standards of conduct providing for . . . the fair and equal treatment of all members"
(Emphasis added.)

In our judgment, the above-quoted bylaw does not violate the statutory requirement of "fair and equal treatment." An individual's membership in a union constitutes a contractual relationship that subjects the member to the union's constitution and bylaws. Ballas v. McKiernan, 63 LC §10,959 (N.Y., 1970). We see nothing inherently unfair in the bylaw concerning eligibility for legal representation. So long as such bylaw is applied on a consistent basis by the union, all members have been treated fairly, equally, and in accordance with the "contract" which they have entered into. Although members holding membership continuously for the preceding year are eligible for legal representation, and members with a lesser period of continuous membership are not, both eligible and non-eligible members have been treated equally if the bylaw is applied uniformly as to all members. Therefore, in our opinion, KAPE has not violated the duty of "fair and equal treatment" in adopting the subject bylaw.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General