



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2213
CONSUMER PROTECTION: 296-3751
ANTITRUST: 296-3299

February 18, 1980

ATTORNEY GENERAL OPINION NO. 80- 56

Mr. Bob W. Storey, Esq.
Suite 310, Columbian Title Building
820 Quincy Street
Topeka, Kansas 66612

Re: State Governmental Ethics -- Statements of Substantial
Interests -- Individuals Required to File

Synopsis: Employees of the Kansas Turnpike Authority who receive
compensation of twenty thousand dollars (\$20,000) or more
per year are not required to file statements of substantial
interests with the Kansas Secretary of State by K.S.A.
1979 Supp. 46-247.

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Dear Mr. Storey:

In your capacity as General Counsel for the Kansas Turnpike Authority (hereinafter "KTA" or "Authority") you have asked our opinion "whether or not KTA employees . . . who receive over \$20,000.00 compensation have to report under Chapter 46 of Kansas Statutes Annotated." More specifically, you inquire whether such "higher echelon management people" are required to file a written statement of substantial interests pursuant to K.S.A. 1979 Supp. 46-247, the relevant portions of which state:

"The following individuals shall file written statements
of substantial interests . . .

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Mr. Bob W. Storey, Esq.
Page Two
February 18, 1980

"(c) state officers and employees receiving compensation from the state at a rate of twenty thousand dollars (\$20,000) per year or more"

For purposes of the Governmental Ethics Act, K.S.A. 1979 Supp. 46-221 defines a state officer or employee as follows:

"(a) 'State officer or employee' means (1) any individual who is an elected or appointed state officer, (2) any individual who is in the classified service or unclassified service of the Kansas civil service act, (3) all officers and employees of the legislative branch and of the governor's office, irrespective of how compensated or period of employment, and (4) any individual who receives monthly or semi-monthly compensation for services from the state or any state agency." [Emphasis supplied.]

Also relevant to your inquiry are the pertinent portions of K.S.A. 1979 Supp. 46-224, defining a state agency as follows:

"(a) 'State agency' means the legislature, legislators, legislative committees and councils and all executive departments, institutions, offices, officers, commissions, boards and authorities of the state, but does not include municipalities and other political subdivisions." [Emphasis supplied.]

Additionally, the Kansas Turnpike Authority is established by K.S.A. 68-2003, which states in part as follows:

"There is hereby created a body politic and corporate to be known as the 'Kansas Turnpike Authority.' The authority is hereby constituted a public instrumentality and the exercise by the authority of the powers conferred by this act in the construction, operation and maintenance of turnpike projects shall be deemed and held to be the performance of an essential governmental function." [Emphasis supplied.]

The Kansas Supreme Court has consistently held that the KTA is an agency of state government created by the legislature to perform an essential government function.

In Woods v. Kansas Turnpike Authority, 205 Kan. 770, 472 P.2d 219 (1970) the court declares: "Since inception of the Kansas Turnpike Authority

Mr. Bob W. Storey, Esq.
Page Three
February 18, 1980

in 1953, we have consistently said the authority is an arm or agency of the State created by the legislature to perform an essential governmental function." Similar decisions were reached in Hesterman v. Kansas Turnpike Authority, 183 Kan. 589, 331 P.2d 326 (1958); Anderson Cattle Co. v. Kansas Turnpike Authority, 180 Kan. 749, 308 P.2d 172 (1957); and State, ex rel. v. Kansas Turnpike Authority, 176 Kan. 683, 273 P.2d 198 (1954).

In its most recent decision on this proposition, Flax v. Kansas Turnpike Authority, 226 Kan. 1, (1979), the Court states at page 5: "The Kansas Turnpike Authority is an arm or agency of the state, created by the legislature to perform an essential governmental function" (Citations omitted.)

We also are mindful of past opinions of this office which have dealt with the KTA as "a public entity in regard to the provisions of the U.S. Department of Interior Heritage Conservation and Recreation Manual" (Attorney General Opinion No. 79-137), and other opinions expressing that the KTA is an agency, department or instrumentality of the state for specific purposes. (See also Attorney General Opinions 62-60, 70-75-1, 75-241 and 78-105.)

The designation of a body as an agency of the state largely depends upon the scope of its legislative creation and function.

In light of the above it is our opinion that the KTA is a "state agency" for the specific and limited purpose of K.S.A. 1979 Supp. 46-224, and as such its employees are state employees, within the meaning of K.S.A. 1979 Supp. 46-221. However, such findings are not determinative of whether filing by such persons is required by K.S.A. 1979 Supp. 46-247. Such persons must receive compensation at the rate of \$20,000 per year, and such compensation must be paid by the state.

Should this statute have included the language "or from any state agency" we would have little difficulty stating the Authority's employees are subject to the mandatory reporting provisions. However, from the scope of your inquiry we are informed that "no employees of the KTA receive any compensation from any State funds which would include either the State Treasurer or State general funds." Additionally, you have informed us that "no money collected by the KTA is deposited in any state general fund, but is in a special account of the KTA, which is considered a trust account." [Emphasis added.]

Mr. Bob W. Storey, Esq.

Page Four

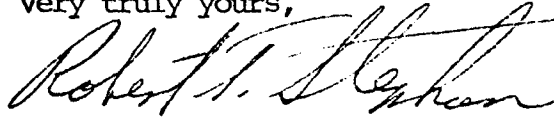
February 18, 1980

It appears the source of "compensation" received is not the state treasury or any other public moneys or revenues, and thus compensation is made other than "by the State."

This conclusion is supported by Attorney General Opinion No. 80-24, which determined that, for the purpose of federal revenue sharing audit requirements, only those funds identified by the reports of the director of accounts and reports pursuant to K.S.A. 75-3731 are "state funds" subject to such audit requirements. It is to be noted that funds of the KTA are not included in said reports and are excluded from such audit.

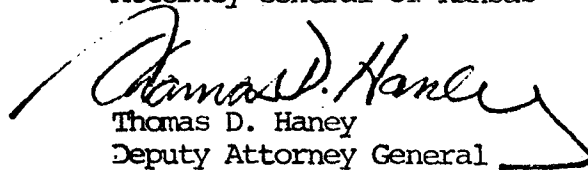
It is, therefore, our opinion that employees of the KTA who receive compensation of \$20,000 or more do not have to file written statements of substantial interests with the Secretary of State.

Very truly yours,



ROBERT T. STEPHAN

Attorney General of Kansas



Thomas D. Haney

Deputy Attorney General

RTS:TDH:may