STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

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

January 6, 1981

ATTORNEY GENERAL OPINION NO. 81- 2

The Honorable Jack Steineger
State Senator, Sixth District
State Capitol
Topeka, Kansas 66612

Re: Elections--Official Ballots--Simultaneous Candidacies

Synopsis: The legislature has provided for two official ballots for the election of officers at general elections. One such official general ballot contains the names of candidates for national and state offices, and the other contains the names of candidates for county and township officers. Thus, where a candidate's name is printed or written once on each of such ballots it does not contravene the statutory prohibition against a candidate's name being printed more than once on a ballot, or being written elsewhere on a ballot where it is printed. In order to avoid absurd and unreasonable consequences, and in order to effectuate an obvious legislative intent to separate the listing of candidates for state and national offices from the candidates for county and township offices, such provisions must be construed as applying with equal force and effect in those counties which use voting machines. Cited herein: K.S.A. 25-601, K.S.A. 1980 Supp. 25-604, 25-605, 25-605a, 25-613, 25-614, 25-616, 25-617, 25-618, K.S.A. 25-1318, 25-1320, 25-1343, 25-2905, 25-3003, 25-3103, 25-3801.

* * *

Dear Senator Steineger:

In requesting an opinion of this office, you have posed the following question: "Is there any possibility that a person may be a candidate

for the office of County Commissioner and for State Representative in the same election?"

Through a discussion with a member of your staff, we have determined that your question has reference to the following provisions of K.S.A. 1980 Supp. 25-613: "Except as otherwise provided in this section, the name of each candidate shall be printed on the ballot only once. . . . No name that is printed on the ballot can be written elsewhere on the ballot." One of the exceptions provided by the language omitted from the foregoing excerpt concerns the simultaneous candidacies for the regular and unexpired terms of an office, and exception also is made for a candidate whose name also appears as a presidential elector or who is a candidate for precinct committeeman or committeewoman. None of these exceptions have relevance to your inquiry. In fact, it is to be noted that, since 25-613 relates to candidates for election at a general election, the latter exception regarding precinct committeemen and committeewomen is somewhat puzzling, because precinct committeemen and committeewomen are elected at primary elections. (See K.S.A. 25-3801.)

In light of the above-quoted proscriptions of 25-613, the essential thrust of your question is whether a person's name that is printed on "the ballot" for either the office of county commissioner or state representative may lawfully be printed or written elsewhere on "the ballot," which necessitates a consideration of several other statutes.

Of particular significance is K.S.A. 25-601, which provides, in pertinent part, as follows:

> "The national and state offices shall be printed upon one ballot, and the county and township offices shall be printed upon another ballot. All official ballots shall be printed in black ink on white paper, through which the printing or writing cannot be read.
>
> "On the back or outside of the ballot, so as to appear when folded, shall be printed the words 'official general ballot,' followed by the words 'national and state offices' or 'county and township offices,' as the case may be . . . ." (Emphasis added.)

It is abundantly clear from these provisions that the legislature has intended that there be two official general ballots--one for national and state offices, and the other for county and township offices. As a result, it would appear that the previously quoted provisions of 25-613 are not contravened where, for example, a person's name is printed

on the official general ballot for county and township offices as a candidate for the office of county commissioner, and such person's name also is written on the official general ballot for national and state offices as a candidate for the office of state representative. Pursuant to 25-613 the printing or writing of a candidate's name more than once is precluded as to a single ballot. In the example given, though, the person's name is printed or written on separate ballots, which would not seem to be in derogation of 25-613. However, due to the controversy that arose after the last primary election with respect to this precise situation, we are aware of contentions that other portions of the state's election laws tend to negate such conclusion. Thus, it is incumbent upon us to examine these other statutory provisions.

Three of the statutes giving rise to the alleged conflict are K.S.A. 1980 Supp. 25-616, 25-617 and 25-618. Each of these statutes has as its essential purpose the provision of a sample ballot form: 25-616 for national offices; 25-617 for state offices; and 25-618 for county and township offices. But it is the prefatory language of each that is cited as providing an indication of legislative intent to have but a single official general ballot. The sample ballot form in 25-616 is preceded by the following statement: "The official general election ballot shall be in the form shown in this section and K.S.A. 1980 Supp. 25-617 and 25-618, and amendments thereto." (Emphasis added.) The prefatory language of 25-617 states: "The state offices part of the official general ballot shall follow the national offices part as is shown in the accompanying form." (Emphasis added.) And, finally, 25-618 commences thusly: "The county and township offices part of the official general ballot shall be separate from the national and state offices part thereof and shall be in the form shown in this section and K.S.A. 1978 Supp. 25-611." (Emphasis added.)

As we understand it, the argument is made that the prefatory language of the three statutes quoted in the preceding paragraph, particularly the emphasized portions thereof, indicate that there is to be only one official general ballot, and that the groupings of national offices, state offices and county and township offices are but parts thereof. For four separate reasons we must disagree.

First, as we previously noted, the essential purpose of 25-616, 25-617 and 25-618 is to provide sample ballot forms. Each is intended to provide a pro forma arrangement of the various offices for which persons are to be elected and to illustrate the placement of the names of the candidates for such offices in relation thereto. These statutes do not have as their purpose the specification of the number of official general ballots, and in our judgment it is inappropriate to rely tangentially on these statutes for a determination of the number of official

general ballots when that objective is accomplished directly and specifically by K.S.A. 25-601. At best, the three statutes prescribing the sample ballot forms might be relied upon to suggest an ambiguity among these statutes and the provisions of 25-601.

Second, we do not believe such an ambiguity exists. In fact, it is our opinion that, when read in conjunction, the statutory language and the sample ballot forms contained in 25-616, 25-617 and 25-618 support a finding that the legislature intends that there be two official general ballots. But, before offering an explanation of our reasoning in this regard, it should be noted that the prefatory language of 25-616 quoted above makes it appropriate to construe these statutes together, which is supported by the well-established rule of statutory construction that statutes in pari materia should be construed together so as to ascertain legislative intent. Brown v. Keill, 224 Kan. 195, 200 (1978). Also, we suggest that an understanding of our rationale can be facilitated by reference to the sample ballot forms set forth in these statutes. However, since reproduction of these forms in this opinion would be extremely cumbersome, copies thereof have been attached hereto.

Initially, it is to be noted that the sample ballot form in 25-616, providing for the grouping of national offices and the arrangement of the names of candidates therefor, is commenced by a three-line heading. The first two lines thereof contain the following statement: "STATE OF KANSAS OFFICIAL GENERAL BALLOT." Centered beneath is the following: "National and State Offices." (Emphasis added.) Such heading is absent from the sample ballot form for state offices in 25-617, however. Instead, such sample form is preceded by double horizontal lines, with the centered heading "STATE OFFICES" directly beneath. Further, the prefatory language of this statute states that the "state offices part of the official general ballot shall follow the national offices part." (Emphasis added.) From these facts, it is quite apparent that the national offices and the state offices are but separate parts of a single ballot.

On the other hand, 25-618 begins by stating that "[t]he county and township offices part of the official general ballot shall be separate from the national and state offices part thereof." (Emphasis added.) Thus, while 25-617 directs that the state offices follow the national offices, 25-618 requires that the county and township offices be separate from the national and state offices. This is clearly in harmony with a finding that there are two separate ballots--one containing national and state offices, and the other containing county and township offices.

Moreover, the sample ballot form in 25-618 begins with a three-line heading, the first two of which are identical to those beginning the ballot form in 25-616, and the third line states: "County and Township offices." Thus, while the sample ballot forms contained in 25-616 and 25-618 begin with similar headings, no such heading is prescribed for the state offices form. These facts further support a conclusion that, collectively, 25-616 and 25-617 set forth the pro forma requirements for the national and state offices ballot, and 25-618 prescribes a separate pro forma ballot for county and township offices. If such were not the case, it would not be necessary to begin the ballot form for county and township offices with a heading declaring it to be an "official general ballot," since that would have already been accomplished in 25-616. Stated otherwise, if the county and township offices sample ballot form is but another part of a single official general ballot, then the repetition of such heading was unnecessary, illustrated by the fact it was unnecessary to do so with respect to the sample ballot form for state offices in 25-617, which is clearly a part of the same ballot containing national offices.

The third basis for disagreeing with the contention that 25-616, 25-617 and 25-618 collectively prescribe a single official general ballot is that, in those counties where paper ballots are used, two official general ballots (one containing national and state offices and the other containing county and township offices) have been printed and used for many years. Although we have not determined the precise duration of such practice, we do not believe the investigation necessary to achieve such precision is warranted, since it is abundantly clear without such research that this practice has continued for an extended period of time, such that it has become persuasive as to the correct statutory interpretation. Under the doctrine of operative construction, where a statute has been given an interpretation by the administrative body charged with its enforcement, the courts will accord great weight to such interpretation. State v. Helgerson, 212 Kan. 412, 413 (1973). See, also, Bill George Chrysler-Plymouth, Inc. v. Carlton, 216 Kan. 365, 370 (1975) and cases cited therein.

Finally, even assuming arguendo that an ambiguity exists among the provisions of 25-601, 25-616, 25-617 and 25-618, we believe the rules of statutory construction compel a finding that the legislature intended to prescribe two separate ballots, with each being an official general ballot. In our judgment, application of the previously noted rule of construction regarding statutes in pari materia produces such result. Assuming that there is an apparent ambiguity among 25-601 and the statutes prescribing sample ballot forms, this rule requires

that the statutes be construed together "with a view of reconciling and bringing them into workable harmony, if reasonably possible to do so." Callaway v. City of Overland Park, 211 Kan. 646, 650 (1973). However, a harmonious result cannot be achieved if 25-616, 25-617 and 25-618 are construed as requiring but one official general ballot. Such construction is in direct conflict with the provisions of 25-601 and would result in its repeal by implication, since the statutes prescribing the ballot forms have been amended subsequent to the last amendment of 25-601 and, therefore, would represent the latest expression of legislative will. Kimminau v. Common School District, 170 Kan. 124, 128 (1950). However, as a corollary to the rule of construction requiring statutes in pari materia to be construed together, it is to be noted that "[r]epeals by implication are never favored in the law and a former act will not be held to have been repealed by implication unless a later enactment is so repugnant to the provisions of the first act that both cannot be given force and effect." Jenkins v. Newman Memorial County Hospital, 212 Kan. 92, 96 (1973). As amply demonstrated herein, an alternative construction reconciling these statutory provisions is available and, therefore, must be adopted.

In our judgment, any of the four points set forth above is sufficient to negate a contention that the legislature intended to provide for only one official general ballot. Collectively, these legal arguments are more than persuasive to a contrary finding that the legislature intended to and did in fact provide for two such ballots, and we have so concluded. It also should be noted that our determination that there are two official general ballots is in harmony with the statutes governing the canvassing of election returns. In particular, we call to your attention the provisions of K.S.A. 25-3103, which provides that the county board of canvassers is to make the final canvass of election returns of "every county, township, city and school election." (Emphasis added.) This statute also requires the county board of canvassers to make the intermediate canvass of, inter alia, "[e]lections of national and state officers." (Emphasis added.) Certainly, the fact that county and township officers are on one ballot and national and state officers are on another facilitates these different functions of the county boards of canvassers.

The final point worthy of consideration herein is the contention that a conclusion that there are two official general election ballots has application only in counties which use paper ballots and has no application in counties which utilize voting machines. We cannot agree. Obviously, there are provisions of the state's election laws which, by their very nature, have application only to the use of paper ballots

and cannot be applicable to the use of voting machines. The legislature recognized such fact with the enactment of K.S.A. 25-1343, which states:

> "All laws and parts of laws now in force within this state which relate to state, county, city or township elections, and defining the powers and duties of election officers, so far as applicable to the use of automatic ballot or voting machines, shall remain in full force and effect; and all laws or parts of laws inconsistent herewith shall be and the same are hereby suspended in each county, city, township, ward or precinct wherein automatic ballot or voting machines are used so long as the same shall be used therein; and nothing in this act contained shall be construed as repealing any existing laws, or authorizing any deviation or omission therefrom, except as provided for and set forth herein."

Clearly, there are requirements in the elections laws regarding ballots which, in light of the foregoing statutory provisions, cannot be construed as being applicable to the use of voting machines. Obvious examples of such requirements are K.S.A. 1980 Supp. 25-604, providing for the printing of ballots; those provisions of K.S.A. 1980 Supp. 25-614 concerning the marking of ballots; K.S.A. 25-2905, requiring ballots to be folded; and K.S.A. 25-3003, providing for the stringing and fastening of ballots after they have been counted. However, we do not believe that a statutory reference to "ballot" is necessarily incompatible with statutes authorizing and governing the use of voting machines.

In this regard, it is of some note that courts in other jurisdictions have reconciled statutory requirements as to "ballots" with the use of voting machines. In La Porta v. Broadbent, 530 P.2d 1404 (1975), the Supreme Court of Nevada held that, even though the Nevada statutes had not "been kept current with the transposition of voting 'machines'" (Id. at 1406, n. 2), the term "ballot" refers to "machines, computers, or whatever voting device designates candidates." Id. at Syl. ¶2. More specifically, the Oklahoma Supreme Court stated: "[T]he conclusion is inescapable that the face of the voting machine with ballot labels bearing candidates names showing thereon is a 'ballot'." Helm v. State Election Bd., 589 P.2d 224, 230 (1979). Also, based on its finding that "a 'ballot' is a means, or instrumentality by which a voter secretly indicates his will or choice so that it may be recorded as being in favor of a certain candidate, or for or against a certain proposition

or measure" [Porter v. Oklahoma City, 446 P.2d 384, 391 (1968)], the Oklahoma Supreme Court held that "[s]tatutes authorizing use of voting machines are not violative of but in harmony with constitutional provision to effect that in all elections votes shall be by ballot . . . ." Id. at Syl. ¶4.

It is apparent, therefore, that "ballot" assumes different meanings, depending on the context in which it is used. Under certain circumstances, "ballot" has obvious reference to the piece of paper upon which the names of candidates or propositions are printed. In others, it can have a much broader application where it is intended to refer generally to the means of voting, and in these instances, "ballot" is compatible with the use of voting machines. This is illustrated by K.S.A. 1980 Supp. 25-605, which provides for the printing of constitutional amendments on the "ballot." We find no basis for concluding that the format of the proposition on ballot labels for voting machines may differ from the requirements of this statute merely because it refers to "ballots." Similarily, we believe that K.S.A. 1980 Supp. 25-605a has application to the use of voting machines, even though it concerns the phrasing of "[e]very question or proposition placed upon ballots to be submitted to the voters." (Emphasis added.) We also note the provisions of K.S.A. 25-1320, which is contained in the series of statutes governing the acquisition and use of voting machines. This statute amply demonstrates that the Kansas legislature intended that the term "ballot" should also have application, where appropriate, to the use of voting machines, and it provides as follows:

> "The officers charged with the duty of providing ballot labels for any polling place shall provide two (2) sample ballots, which shall be arranged in the form of a diagram showing the entire front of the voting machine as it will appear after the official ballot labels are arranged on the voting machine for voting on election day. Such sample ballots shall be posted or otherwise displayed in the polling place during the day of election." (Emphasis added.)

For these reasons, we believe that the requirements of K.S.A. 25-601 that there be two official general ballots, one for national and state offices and the other for county and township offices, are in harmony with the statutes prescribing the use of voting machines. In examining 25-601, there can be no question this statute has been drawn within the context of paper ballot usage. The directions provided by this

statute for the printing of ballots makes this fact clear. However, it is equally clear that, by this statute's requirements that there be two official general ballots, the legislature has intended a separation of the candidates for national and state offices from the candidates for county and township offices. Thus, although the requirements of 25-601 as to the printing of paper ballots can have no application, by their very nature, to the use of voting machines, we find that the legislature's intent as to two separate ballots, i.e., two separate groupings of candidates, is compatible with voting machine usage.

This conclusion is consistent with the provisions of K.S.A. 25-1343 (previously quoted herein) requiring, in effect, that the state's general election laws, or portions thereof, that are "applicable to the use of automatic ballot or voting machines, shall remain in full force and effect." Also pertinent are the provisions of K.S.A. 25-1318, which requires that the names of the candidates shall be arranged on ballot labels on the face of voting machines "in as nearly the same manner as on a regular ballot as possible."

Thus, it is our opinion that, for the purposes of K.S.A. 1980 Supp. 25-613, the listing of the names of candidates for national and state offices on a voting machine's ballot label is to be considered a ballot, and the listing of the names of candidates for county and township offices on a voting machine's ballot label also is to be considered a ballot, each of which is separate and distinct from the other. In forming this opinion we are cognizant that a contrary conclusion may be reached, if the exact and literal import of the language in 25-601 is allowed to prevail. However, we believe that our opinion gives effect to the rule of statutory construction that:

> "When the interpretation of some one section of an act according to the exact and literal import of its words would contravene the manifest purpose of the legislature, the entire act should be construed according to its spirit and reason, disregarding so far as may be necessary the literal import of words or phrases which conflict with the manifest purpose of the legislature. (Kansas Commission on Civil Rights v. Howard, 218 Kan. 248, Syl. ¶2, 544 P.2d 791 [1975].)" Brown v. Keill, supra.

See, also, Whitehead v. State of Kansas Labor Department, 203 Kan. 159, 160 (1969) and School District v. Board of County Commissioners, 201 Kan. 434, 439 (1968) and cases cited therein.

In our judgment, to construe 25-601 according to the exact and literal import of the words used therein, so as to limit its application to printed paper ballots, contravenes the rule of construction set forth above. It would ignore what we believe to be the manifest purpose of the legislature, which we have ascertained by construing together the relevant statutes in pari materia. The Court in Brown v. Keill, supra, considered the determination of legislative intent, as follows:

> "The fundamental rule of statutory construction, to which all others are subordinate, is that the purpose and intent of the legislature governs when that intent can be ascertained from the statute, even though words, phrases or clauses at some place in the statute must be omitted or inserted. (Farm & City Ins. Co. v. American Standard Ins. Co., 220 Kan. 325, Syl. ¶3, 552 P.2d 1363 [1976].) In determining legislative intent, courts are not limited to a mere consideration of the language used, but look to the historical background of the enactment, the circumstances attending its passage, the purpose to be accomplished and the effect the statute may have under the various constructions suggested. (State, ex rel., v. City of Overland Park, 215 Kan. 700, Syl. ¶10, 527 P.2d 1340 [1974].) In order to ascertain the legislative intent, courts are not permitted to consider only a certain isolated part or parts of an act but are required to consider and construe together all parts thereof in pari materia." (Emphasis added.) Id. at 199, 200.

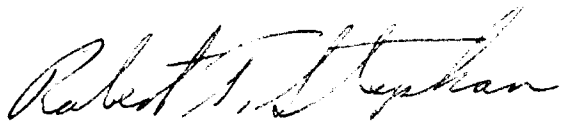
Again, we believe our conclusion to be consonant with these principles, particularly when the effect of the alternative construction is considered. If we were to adopt a strict and literal construction of 25-601, the effect would be that in counties using printed paper ballots, there would be two official general ballots (as we previously concluded herein), while in voting machine counties, there would be just one such ballot. The ultimate effect of such distinction would be a disparate application of 25-613 in the various counties throughout the state, depending on whether voting machines were used in any such county. It would mean, for example, that a person might simultaneously be a candidate for county commissioner and for state representative in the same election in counties using printed paper ballots, while such simultaneous candidacies would not be permitted in voting machine counties. Even ignoring the constitutional issue of whether such result would deny equal protection of the laws, we are still compelled to reject an interpretation that would yield such a patently unfair and unreasonable result. "It is a cardinal rule of statutory construction that the legislature intended

a statute be given a reasonable construction so as to avoid unreasonable and absurd consequences." Williams v. Board of Education, 198 Kan. 115, 125 (1967). Stated otherwise, "[a] statute should be so construed if possible as not to charge the legislature with a ridiculous result." Keck v. Cheney, 196 Kan. 535, 537 (1966). "Furthermore, a statute should never be given a construction that leads to uncertainty, injustice or confusion, if possible to construe it otherwise." Whitehead v. State of Kansas Labor Department, supra at 162.

We will not burden this opinion further by an extended discussion of the "unreasonable consequences" of construing 25-613 as applying one way in counties having voting machines and as applying another way in counties which use paper ballots. The "uncertainty, injustice and confusion" that would result from such construction should be self-evident.

In conclusion, it is our opinion that the legislature has provided for two official ballots for the election of officers at general elections. One such official general ballot contains the names of candidates for national and state offices, and the other contains the names of candidates for county and township officers. Thus, where a candidate's name is printed or written once on each of such ballots it does not contravene the statutory prohibition against a candidate's name being printed more than once on a ballot, or being written elsewhere on a ballot where it is printed. In order to avoid absurd and unreasonable consequences, and in order to effectuate an obvious legislative intent to separate the listing of candidates for state and national offices from the candidates for county and township offices, such provisions must be construed as applying with equal force and effect in those counties which use voting machines.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas

W. Robert Alderson
First Deputy Attorney General

RTS:WRA:phf
Enclosures