



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN  
ATTORNEY GENERAL

January 7, 1981

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

ATTORNEY GENERAL OPINION 81- 5

Mr. Nick A. Tomasic  
District Attorney  
29th Judicial District  
Wyandotte County Court House, First Floor  
710 N. 7th  
Kansas City, Kansas 66101

Re: Elections--Election Expenses of Candidates and Organizations--  
Reporting of Receipts and Expenditures by Certain Organizations

Synopsis: The provisions of K.S.A. 1980 Supp. 25-901, requiring inter alia the reporting of receipts and expenditures by organizations promoting the adoption or defeat of any question submitted at certain elections, does not apply to state elections. Since the question of rejecting the non-partisan method of selecting judges of the district court is a proposition of state concern, an election held thereon is a state election. Thus, a committee formed to promote the adoption of such proposition is not subject to the provisions of K.S.A. 1980 Supp. 25-901. Cited herein: K.S.A. 1980 Supp. 20-301a, 20-2901, 25-101, 25-901, 25-1601, K.S.A. 25-2501, 25-2502, K.S.A. 1980 Supp. 25-2503, 25-4101, 25-4102, 25-4135, Kan. Const., Art. 2, §16; Art. 3, §1; Art. 4, §2.

\* \* \*

Dear Mr. Tomasic:

You have inquired as to the application of K.S.A. 1980 Supp. 25-901. It is our understanding that your request is predicated on the fact that, at the immediately preceding general election, the qualified electors of the twenty-ninth judicial district, the boundaries of which are coextensive with the boundaries of Wyandotte County, voted

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upon and approved a proposition to reject the then existing non-partisan method of selecting judges of the district court, and to provide for the subsequent election thereof. Said proposition was submitted under authority of K.S.A. 1980 Supp. 20-2901.

Sometime prior to the election, a committee (Citizens Committee for Qualified Judges) was formed for the purpose of promoting the adoption of said proposition. You advise that "[f]unds were raised and expenditures were made" by this committee "to promote the cause," and in light of such action you have requested our opinion as to whether said committee is subject to the provisions of K.S.A. 1980 Supp. 25-901, which states in pertinent part:

"Every committee, club, organization, municipality or association designed to promote or engaged in promoting the success or defeat of any party or the election or defeat of any candidate or candidates for any city, school district, community junior college, township or county office, or the adoption or defeat of any question submitted at any city, school district, community junior college, township or county election, shall have a treasurer, and shall cause to be kept a detailed account of all moneys or property or other thing of value received by it, and of the manner in which the same shall be expended; and shall file annually with the county election officer of the county in which such committee, club, organization or association has its headquarters a statement of all its receipts and expenditures, showing in detail from whom said moneys or property or other thing of value were received, to whom said moneys or property or other thing of value were paid, for what specific purposes each payment was made, and the exact nature of the service rendered in consideration thereof." (Emphasis added.)

Because of the emphasized portion of the foregoing statutory provisions, we concur in your opinion that K.S.A. 1980 Supp. 25-901 does not apply in the situation described above. In our judgment, the committee in question is not a "committee . . . designed to promote or engaged in promoting . . . the adoption or defeat of any question submitted at any city, school district, community junior college, township or county election." Although we recognize that a contrary argument can be made that the proposition was submitted at a "county election," thereby invoking the requirements of 25-901, we do not believe such argument is well-taken.

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We note that K.S.A. 1980 Supp. 25-2503(c) defines "county election" as meaning the "election of such county officers as are provided by law to be elected." While there can be no question that county officers of the several counties were elected at the immediately preceding "general election" (see K.S.A. 25-2502), the same election at which the proposition was submitted, we do not believe such fact compels the conclusion that it was submitted at a county election within the meaning of 25-901. Initially, it is to be considered that the definition of "county election" in 25-2503(c) has not been made explicitly applicable to 25-901. By virtue of K.S.A. 25-2501, the definitions in 25-2503 are made applicable to the provisions of the various sections of Chapter 406 of the 1968 Session Laws of Kansas, and 25-901 was not contained therein.

However, even disregarding this fact, it is pertinent that K.S.A. 1980 Supp. 20-2901(c) requires that the proposition for rejection of the non-partisan method of selecting judges of the district court be submitted at a "general election." Article 4, Section 2 of the Kansas Constitution requires that "[g]eneral elections shall be held biennially on the Tuesday succeeding the first Monday in November in even-numbered years." An election held in conformity with these requirements is defined in K.S.A. 25-2502(a) as being a "general election," and K.S.A. 1980 Supp. 25-101 provides that the election held on this constitutionally-prescribed date is a "general election" to elect the officers listed therein, including national, state and county officers. Also, K.S.A. 1980 Supp. 25-1601 provides for the election of township officers at this same time. Thus, while the election at which said proposition was submitted to the voters of the twenty-ninth judicial district might be described as a "county election," because county officers were elected at that time, such election might also be described, by virtue of the other definitions in K.S.A. 1980 Supp. 25-2503, as being a "national election" or "state election" or "township election," since national, state and township officers also were elected at that time.

We think the foregoing creates considerable uncertainty as to the legislature's intended meaning of "county election" in 25-901. Because of such ambiguity, it is necessary to consider and apply rules of statutory construction to ascertain legislative intent. Brown v. Keill, 224 Kan. 195, 199 (1978). Where there is uncertainty as to the meaning of a statutory provision that "is susceptible of more than one construction it must be given that construction which, when considered in its entirety, gives expression to its intent and purpose." United Parcel Service, Inc. v. Arnold, 218 Kan. 102, 107 (1975). As stated in Brown v. Keill, supra at 200:

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"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. 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].)"

Applying these rules of construction to the provisions of K.S.A. 1980 Supp. 25-901, we have concluded that the legislature has intended to exclude state elections from the purview of 25-901. Of pertinence to this conclusion is K.S.A. 1980 Supp. 25-4135, which states: "The provisions of K.S.A. 25-901 to 25-905, inclusive, shall not apply to elections to which this act applies." The "act" referenced in 25-4135 is the Campaign Finance Act (K.S.A. 1980 Supp. 25-4101 et seq.), which, by virtue of the definition of "election" in K.S.A. 1980 Supp. 25-4102(e) applies only to elections for state offices. The thrust of 25-4135, therefore, is to exclude such state elections from the purview of 25-901.

While the intent and purpose of the legislature underlying 25-4135 is clear, we note that, in Attorney General Opinion No. 75-150, Attorney General Curt Schneider concluded that this statute was unconstitutional, because it "effectively and substantially amends K.S.A. 25-901 through -905" without complying with the requirements of Article 2, Section 16 of the Kansas Constitution regarding the amendment of statutes. Though we find no basis for disagreeing with that prior opinion, the fact remains that 25-4135 provides clear evidence of the legislature's intent that 25-901 not apply to elections of state officers.

Moreover, we believe it relevant that in 1975, in apparent response to General Schneider's opinion, the legislature amended 25-901, in pertinent part as follows:

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"Every committee, club, organization, municipality or association designed to promote or engaged in promoting the success or defeat of any party or the election or defeat of any candidate or candidates [to political] for any city, school district, community junior college, township or county office, or the adoption or defeat of any [proposed constitutional amendment or other] question submitted at any city, school district, community junior college, township or county election, shall have a treasurer, and shall cause to be kept a detailed account of all moneys or property or other thing of value received by it, and of the manner in which the same shall be expended; and shall file annually with the county election officer of the county in which such committee, club, organization or association has its headquarters [, and in case the election or defeat of any candidate for state office or of a constitutional amendment was involved shall also file with the secretary of state] a statement of all its receipts and expenditures, showing in detail from whom said moneys or property or other thing of value were received, to whom said moneys or property or other thing of value were paid, for what specific purposes each payment was made, and the exact nature of the service rendered in consideration thereof." L. 1975, ch. 209, §21.

In the foregoing quotation, the bracketed material was deleted by the 1975 amendments, and the underscored material was inserted. As can be seen from the above, prior to these amendments, this section had application to all elections of persons to political offices and to all elections wherein constitutional amendments or any other questions were submitted. The amendments, however, greatly restricted the section's scope, and considering the net effect thereof, it is clear that the legislature intended to limit the purview of 25-901 to elections of local concern only. Buttressed by the legislative intent expressed by K.S.A. 1980 Supp. 25-4135, there can be little doubt that 25-901 is no longer applicable to state elections.

In light of this obvious legislative intent, it is apparent that the definitions of "county election" and "state election" in K.S.A. 1980 Supp. 25-2503 are of little utility in effectuating such intent; since both elections occur at the same time and are but separate parts of a "general election." Thus, having considered all of the provisions of 25-901, so as to determine the context in which the term is used, as well as considered this statute in conjunction with other statutes in pari materia, we have concluded that, in using the term "county election" in 25-901, the legislature has intended to prescribe more

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than the type of election at which a proposition is submitted, i.e., the election at which county officers are elected, and it is our opinion that such term also must be read as conveying the scope of the matter to be considered, i.e., a matter of concern to the electors of the county only. Accordingly, a question submitted at a "general election" that is a matter of state concern (e.g., a constitutional amendment) cannot be considered as being submitted at a county election merely because county officers also are elected at said general election.

Applying this conclusion to the facts you have presented, it should require little discussion to note that a judge of the district court is a state officer. Article 3, Section 1 of the Kansas Constitution provides in pertinent part:

"The judicial power of this state shall be vested exclusively in one court of justice, which shall be divided into one supreme court, district courts, and such other courts as are provided by law . . . . The supreme court shall have general administrative authority over all courts in this state."

Clearly, therefore, the district courts are part of a state judicial system, thus compelling the conclusion that the various judges thereof are state officers. Moreover, the term "judge of the district court" is defined by K.S.A. 1980 Supp. 20-301a as meaning "district judges, associate district judges and district magistrate judges," and K.S.A. 1980 Supp. 25-2503(b) defines "state election" as including the election of "district judges, associate district judges, [and] district magistrate judges." In our judgment, the conclusion that a judge of the district court is a state officer is irresistible, and it requires no leap of faith to further conclude that a proposition concerning the manner in which judges of the district court are chosen is a question of state rather than local concern. Consequently, an election on such proposition must be regarded as a state election and beyond the scope of 25-901.

Some confusion may result from the fact that the boundaries of Wyandotte County and the twenty-ninth judicial district are identical, but it must be realized that the electorate to whom the proposition is submitted are the qualified electors of the judicial district. K.S.A. 1980 Supp. 20-2901(c). The fact that these persons are at the same time qualified electors of the county does not make an election on the proposition a county election. The overriding consideration is that the proposition does not posit a matter of concern to the county; because it concerns

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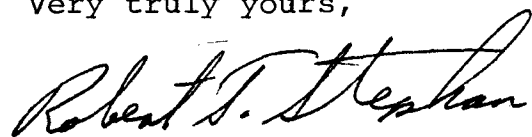
the district court of the twenty-ninth judicial district it pertains to the state judicial system, a matter of state concern.

A matter of some relevance to this issue was addressed by the Kansas Supreme Court in Russell State Bank v. Steinle, 159 Kan. 293 (1944). There the Court determined that, even though the board of county commissioners of Russell County had exercised its statutory authority to cause a county court to be established in Russell County, the board had no authority to abolish said court absent corresponding statutory authority. In so concluding, the Court stated:

"The mere fact this particular court was located within the physical boundaries of Russell county did not make it a tribunal for transacting the business affairs of Russell county any more than the police court, the justice of the peace courts or the district court of Russell county are tribunals created for the transaction of the county's business." Id. at 296.

Therefore, since the proposition submitted to the qualified electors of the twenty-ninth judicial district at the immediately preceding general election is a question of state concern, the election thereon is a state election. Thus, as K.S.A. 1980 Supp. 25-901 does not apply to state elections, the committee formed to promote the adoption of said proposition is not subject to this statute's provisions.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



W. Robert Alderson  
First Deputy Attorney General

RTS:WRA:phf