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

February 3, 1981

ATTORNEY GENERAL OPINION NO. 81-32

Honorable Homer E. Jarchow
State Representative, 95th District
Room 273-W, State Capitol
Topeka, Kansas 66612

Re: Kansas Constitution--Finance and Taxation--Uniform and Equal Rate of Assessment

Kansas Constitution--Legislature--Approval or Veto of Bills by the Governor

Synopsis: The provisions of subsection (b) of K.S.A. 1980 Supp. 79-331 violate the provisions of Article 11, Section 1 of the Kansas Constitution and are void.

The provisions of 1979 House Bill No. 2456, as amended and passed by the House of Representatives and the Senate, are not the same provisions contained in 1979 House Bill No. 2456, as enrolled and signed by Governor Carlin, which appear at Chapter 310 of the 1979 Session Laws of Kansas and K.S.A. 1980 Supp. 79-331. Thus, said provisions are void. Cited herein: K.S.A. 1980 Supp. 79-331; L. 1979, Ch. 310, §1 (1979 House Bill No. 2456); Kan. Const., Art. 2, §14, Art. 11, §1.

* * *

Dear Representative Jarchow:

You request our opinion as to whether the method of appraisal prescribed in subsection (b) of K.S.A. 1980 Supp. 79-331, as limited by the provisions of subsection (c) thereof, is violative of the provisions of Article 11, Section 1 of the Kansas Constitution.

In response to your inquiry concerning the constitutionality of these provisions, we begin by stating certain basic principles of property taxation under Article 11, Section 1 of the Kansas Constitution, and by making certain observations relative to the provisions of K.S.A. 79-329 et seq.

First, as stated by the Court in State, ex rel., Stephan v. Martin, 227 Kan. 456 (1980), "Article 11, §1 of the Kansas Constitution requires that '[t]he legislature shall provide for a uniform and equal rate of assessment and taxation,' except that the legislature may classify or exempt constitutionally specified property for tax purposes." (Emphasis added.) Id. at Syl. ¶2.

One kind of property which the constitution permits the legislature to classify for tax purposes is "mineral products." (Kan. Const., Art. 11, §1.) However, while the constitution permits the classification of mineral products, and the taxation thereof uniformly as to class, it does not require such separate classification and taxation. Thus, while property may be such that it could be separately classified and taxed, if the legislature has not so classified it, or has not exempted it from taxation, then the property must be taxed under the uniform and equal clause of Article 11, Section 1 of the Kansas Constitution. See Wheeler v. Weightman, 96 Kan. 50 (1915) and Sumner County v. Wellington, 66 Kan. 590 (1903). Said clause "requires the legislature to provide for uniformity in the basis of assessment as well as in the rate of taxation." State, ex rel., Stephan v. Martin, supra, at Syl. ¶3.

Second, notwithstanding the constitutional prohibition of nonuniform or unequal assessment or taxation, the constitution "does not compel the use of but a single mode or method of assessment." Francis, Treas. v. A.T. & S.F. Rld. Co., 19 Kan. 303, 307 (2d ed.) (1877). See, also: Bank v. Geary County, 102 Kan. 334, 348 (1918) and Hunt v. Allen County, 82 Kan. 824, 828 (1910). Thus, the legislature properly may prescribe different methods of appraisal for different classes of property. However, any method of appraisal must be designed to result in the achievement of "the ultimate goal of valuing all property upon an equal basis . . . . Article 11, §1 of the Kansas Constitution prohibits favoritism, and requires uniformity in valuing property for assessment purposes so that the burden of taxation will be equal." (Emphasis added.) State, ex rel., Stephan v. Martin, supra, at Syl. ¶¶7, 10.

Third, the provision of K.S.A. 79-329, et seq., including those of K.S.A. 1980 Supp. 79-331, relate to the valuation and taxation of all oil and gas leases and all oil and gas wells producing,

or capable of producing, oil or gas in paying quantities, together with all casing, tubing or other material therein, and all other equipment and material used in operating the same. In addition, all such property is "declared to be personal property" and is required to be "assessed and taxed as such." K.S.A. 79-329.

Fourth, it must be realized that the legislature, by the provisions of K.S.A. 79-329 et seq., has not classified oil and gas leases or property within the constitutional meaning of "classification and . . . taxation uniformly as to class." (Kan. Const., Art. 11, §1.) That is, under the exception clause of Article 11, Section 1, the legislature, with regard to "motor vehicles, mineral products, money, mortgages, notes and other evidence of debt," may segregate the same from other classes of property and either (1) provide for a lower rate of taxation to be applied to that class than is applied to property which cannot be classified [see Hunt v. Eddy, 150 Kan. 1 (1939) and Voran v. Wright, 129 Kan. 1 (1929), op. on reh., 129 Kan. 601 (1939)], or (2) provide that a higher or lower rate of valuation is to be determined for that class of property than is determined for unclassifiable property [see Commercial National Bank v. Board of County Commissioners, 201 Kan. 280 (1968)], or (3) both of the above. However, the legislature has exercised none of these constitutionally authorized alternatives in regard to oil and gas leases or property. Instead, such property is classified as personal property and is "required to be assessed and taxed as such." K.S.A. 79-329.

By the provisions of K.S.A. 1980 Supp. 79-331, the legislature has merely prescribed two methods of assessment for such property. Subsection (a) thereof prescribes one method, and subsection (b) thereof sets forth another, with the provisions of subsection (c) limiting the property to which the method prescribed in subsection (b) applies. Thus, the provisions of 79-331 simply set forth the means of valuing oil and gas leases and property for purposes of taxation. However, those provisions do not separately classify all oil and gas leases and property and tax all such property uniformly as to class. Rather, the provisions thereof are ostensibly set forth for the purpose of prescribing methods of appraisal which will result in oil and gas leases and property being valued upon the same basis of assessment as all other personal property subject to general property taxation. K.S.A. 79-329. Therefore, the method of appraisal prescribed in subsection (b) of the statute must be scrutinized to determine whether the same is designed to achieve "the ultimate goal of valuing all property upon an equal basis." State, ex rel., Stephan v. Martin, supra.

Fifth, the legislature, in responding to the requirement of Article 11, Section 1, that it provide for a uniform and equal rate of assessment and taxation, has provided that all property

subject to general property taxation be valued on an equal basis. The equal basis currently provided by the legislature is "fair market value in money." See, State, ex rel., Stephan v. Martin, supra at Syl. ¶5.

In K.S.A. 79-503, the legislature defines "fair market value in money" to mean

> "the amount of money that a well informed buyer is justified in paying and a well informed seller is justified in accepting, assuming that the parties thereto are acting without undue compulsion and that the property has been offered at the market place for a reasonable length of time."

This definition of "fair market value" is in substantially the same language as the Kansas Supreme Court has defined it, and as it is generally understood and accepted. See, State, ex rel., Stephan v. Martin, supra at Syl. ¶6.

Based upon the foregoing principles, your inquiry properly can be restated as whether the method of appraisal prescribed in subsection (b) of K.S.A. 1980 Supp. 79-331, as limited by the provisions of subsection (c) thereof, is violative of the provisions of Article 11, Section 1 of the Kansas Constitution, which require the legislature to provide for a uniform and equal rate of assessment and taxation. These subsections read as follows:

> "(b) The valuation of the working interest and royalty interest, except valuation of equipment, of any original base lease or property producing oil or gas for the first time in economic quantities on and after July 1 of the calendar year preceding the year in which such property is first assessed shall be determined for the year in which such property is first assessed by determining the quantity of oil or gas such property would have produced during the entire year preceding the year in which such property is first assessed upon the basis of the actual production in such year and by multiplying the income and expenses that would have been attributable to such property at such production level, excluding equipment valuation thereof, if it had actually produced said entire year preceding the year in which such property is first assessed by sixty percent (60%).

> "(c) The provisions of subsection (b) of this section shall not apply in the case of any production from any direct offset well or any subsequent well on the same lease." (Emphasis added.)

In our judgment, the provisions of subsection (b) of 79-331, as limited by the provisions of subsection (c) thereof, violate constitutional requirements in two respects. First, these statutory provisions, on their face, reflect invidious discrimination, inconsistent with Article 11, Section 1. Second, these provisions prescribe an unsatisfactory method of appraisal, in that said method of appraisal is not designed to result in the achievement of the ultimate goal of valuing all property upon an equal basis.

The first constitutional infirmity of this statute is that it results in invidious discrimination. By the provisions of subsection (c) of 79-331, the legislature expressly limits the application of the method of appraisal prescribed in subsection (b). Subsection (c) provides: "The provisions of subsection (b) of this section shall not apply in the case of any production from any direct offset well or any subsequent well on the same lease." (Emphasis added.) While there may exist a rational basis for distinquishing "direct offset wells" from "original producing wells," that is, wells "producing oil or gas for the first time in economic quantities on and after July 1 of the calendar year preceding the year in which such property is first assessed" [K.S.A. 1980 Supp. 79-331 (b)], we can discern no rational basis for valuing the first original producing well on a lease upon a basis different than that used to value the second and subsequent producing wells on the same lease. If the method of appraisal prescribed in subsection (b) is designed to determine the fair market value in money of original producing wells, that method of appraisal should be equally applicable to all such wells whether they be the first well on a lease or a subsequent well thereon. Such discrimination is inconsistent with Article 11, Section 1 of the Kansas Constitution. State, ex rel., Stephan v. Martin, supra, 227 Kan. at 467; Topeka Cemetery Ass'n v. Schnellbacher, 218 Kan. 39, 44 (1975); and Wheeler v. Weightman, 96 Kan. 50, 58 (1915).

The second constitutional infirmity of K.S.A. 1980 Supp. 79-331(b) is that the provisions thereof are an unsatisfactory method of assessing oil and gas leases, since they may result in either a gross and arbitrary undervaluation of property, or a gross and arbitrary overvaluation of property. That is, under subsection (b), the only factors to be considered in valuing the property specified therein are (1) "the quantity of oil or gas such property would have produced during the entire year preceding the year in which such property is first assessed upon the basis of the actual production in such year," and (2) a flat, across-the-board forty

percent (40%) reduction of the total income and expenses that would have been attributable to such property at such production level. Notably, the following factors are not to be considered: (1) the quality of the oil or gas being produced, (2) the nearness of the wells to market, (3) the character, extent and permanency of the market, (4) the probable life of the wells, or (5) any other facts as may be known by the appraiser to affect the value of the lease or property. Note, however, that each of these factors is required to be considered in valuing oil and gas properties under the provisions of subsection (a) of K.S.A. 1980 Supp. 79-331. Surely, if these latter factors are relevant to a proper determination of the fair market value in money of some oil and gas wells, they should be considered in valuing all oil and gas wells.

One factor omitted from consideration under the provisions of subsection (b) that is highly relevant to the valuation of oil and gas properties is "the probable life of the wells." So important is this factor that the Kansas Supreme Court, in Angle v. Board of County Commissioners, 214 Kan. 708 (1974), struck down an assessment of oil and gas property for the sole reason that the appraiser "had deliberately failed to give appropriate consideration" to this factor. Id. at Syl. ¶3.

Based upon the omission of this vital factor, and all the other factors listed above, it is readily apparent that this method of appraisal was not "designed by the legislature to achieve the ultimate goal of valuing all property upon an equal basis," as is required by Article 11, Section 1 of the Kansas Constitution. State, ex rel., Stephan v. Martin, supra.

In addition, the provision of this statute calling for a flat, across-the-board reduction of forty percent (40%) of the income and expenses attributable to the wells specified in subsections (b) and (c) of this statute exhibits the same arbitrariness as was provided for in the provisions of K.S.A. 1979 Supp. 79-342, which provisions were struck down by the Supreme Court in State, ex rel., Stephan v. Martin, supra. Said reduction is to be applied to all leases and property that qualify under the provisions of subsections (b) and (c) of the statute, irrespective of facts and circumstances which may affect the income or expenses of a particular well. This fact also makes it apparent that the provisions of subsection (b) of K.S.A. 1980 Supp. 79-331 were not designed to achieve the ultimate goal of valuing all property upon an equal basis.

Article 11, Section 1 of the Kansas Constitution prohibits favoritism, and requires uniformity in valuing property for assessment purposes so that the burden of taxation will be

equal. In our judgment, the provisions of subsection (b) of K.S.A. 1980 Supp. 79-331 destroy the uniformity and equality in the rate of assessment of all property required by Article 11, Section 1 of the Kansas Constitution. Thus, we are of the opinion that those provisions are unconstitutional and void. Moreover, the combined provisions of subsections (b) and (c) of K.S.A. 1980 Supp. 79-331 result in invidious discrimination, inconsistent with Article 11, Section 1 of the Kansas Constitution and, thus, for this additional reason, are void.

In addition to the foregoing conclusions, it is our opinion that this statute is invalid for the further reason that the enactment thereof did not comply with the requirements of Article 2, Section 14 of the Kansas Constitution. This section of our Constitution, in pertinent part, provides:

> "Within ten days after passage, every bill shall be signed by the presiding officers and presented to the governor. If the governor approves a bill, he shall sign it. If the governor does not approve a bill, the governor shall veto it by returning the bill, with a veto message of the objections, to the house of origin of the bill. Whenever a veto message is so received, the message shall be entered in the journal and in not more than thirty calendar days (excluding the day received), the house of origin shall reconsider the bill. . . ."

Although this section was modified by an amendment approved by the people of this state in 1974, and its provisions, therefore, are somewhat different than the provisions of this section as they existed in 1947, in our judgment, the following statements of the Court in State, ex rel., v. Robb, 163 Kan. 502 (1947), continue to be appropriate:

> "This section [Art. 2, §14] is clear. There can be no doubt but that each bill passed must be presented to the governor, and if he approves it he shall sign it, and if not he shall return it with his reasons. The rest of the section deals with the power of the legislature to override a veto by vote of two-thirds.
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> "The judiciary is merely one of the three branches of the state government. It should be slow to approve any action which even has the

> semblance of permitting one branch to act toward another in a manner contrary to the terms and provisions of the constitution." (Emphasis added.) Id. at 517.

Likewise, we believe the Court's holdings in Harris v. Shanahan, 192 Kan. 183 (1963), a case in which the Court quotes extensively from, and relies heavily upon, the Robb decision, are also applicable to the case at hand. In Harris, the Court held:

> "Pursuant to Article 2, Section 14 of the Constitution of Kansas, the legislature and the governor exercise co-ordinate functions in enacting laws, and the governor is an essential part of the legislation. Until a bill has the final consideration of the three law-making powers, that is, the house, the senate, and the governor, it is not a law, and the requirements of this provision are mandatory that the governor sign the same bill which passed the legislature.
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> . . . .
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> "The rule that an enrolled bill imports absolute verity and is conclusive evidence of its passage and of its validity cannot be used for the purpose of upholding a bill where the legislative records show beyond any doubt that the enrolled bill the governor signed was not the bill passed by the house of representatives and the senate.
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> "Generally speaking, courts have no right to correct errors made in an enrolled bill but will ordinarily take the bill as they find it, and if not constitutionally enacted, will declare it void." (Emphasis added.) Id. at Syl. ¶¶ 1, 3, 4.

In Harris, the Court also stated:

> "Before an enrolled bill can be impeached successfully by the journals of the legislature, the latter must show affirmatively, clearly, conclusively, and beyond all doubt that the bill as enrolled was not the bill passed." Id. at Syl. ¶2.

We have carefully examined the journals of the 1979 Kansas Legislature, and said journals show affirmatively, clearly, conclusively, and beyond all doubt that 1979 House Bill No. 2456 (L. 1979, ch. 310, §1), as enrolled and signed by Governor Carlin, was not the bill passed by the legislature. Thus, this bill was not constitutionally enacted, and is void. Harris v. Shanahan, supra; State, ex rel., v. Robb, supra; and Ziegler v. Junction City, 90 Kan. 856 (1913).

The journals indicate, positively, that 1979 House Bill No. 2456, as passed by the Senate and House of Representatives provided, in relevant part:

> "The valuation of the working interest and royalty interest, except valuation of equipment, of any original base lease or property producing oil or gas for the first time in economic quantities on or after July 1 of the calendar year preceding the year in which such property is first assessed . . . ." (Emphasis added.)

However, the enrolled bill signed by the Governor, a certified copy of which we obtained from the Office of the Secretary of State, reads, in pertinent part, as follows:

> "The valuation of the working interest and royalty interest, except valuation of equipment, of any original base lease or property producing oil or gas for the first time in economic quantities on and after July 1 of the calendar year preceding the year in which such property is first assessed . . . ." (Emphasis added.) See L. 1979, ch. 310, §1 and K.S.A. 1980 Supp. 79-331(b).

Of course, as passed by both houses of the Legislature, the law, in pertinent part, read "on or after July 1." (Emphasis added.)

From the foregoing, it appears the minds of the House and Senate met in common agreement that 1979 House Bill No. 2456, as amended, should be passed. However, after passage of the bill by both houses, a variation appeared in the language of the bill relating to a very essential part of the enactment---the provision establishing the time at which a lease must first produce minerals in order to

qualify for the special appraisal method. The variation, of course, was the substitution of the conjunctive "and" for the disjunctive "or." If the special method of appraisal is to apply only to "any original base lease or property producing oil or gas for the first time in economic quantities on and after July 1 of the calendar year preceding the year in which such property is first assessed" (emphasis added), then only those leases or property producing oil or gas for the first time in economic quantities on July 1 of the appropriate calendar year, and which continue to produce oil or gas thereafter, qualify under the statute. Thus, any lease or property which produced oil or gas for the first time in economic quantities only after July 1 of the calendar year would not qualify under the statute. Of course, the result would be otherwise if the requirement was "on or after July 1."

In light of the foregoing, we are of the opinion that the above indicated variation is of major significance and that, in this case, the conditions which must exist in order to impeach a published statute are fully met. The journals of the legislature establish positively that the bill, in the form shown by the enrollment, did not pass the Senate nor the House of Representatives. Such is shown affirmatively, clearly, conclusively and beyond all doubt. Thus, it is our opinion the published statute is not a valid law.

In response to any contention that the variance between the bill passed by the legislature and the enrolled bill signed by the governor is ever-so-slight, or is "clearly" a clerical error, and that the variance would be amended by "judicial construction" if the validity of the statute was challenged in a court of law, we note that in State, ex rel., v. Robb, supra, the Court had occasion to discuss two Arkansas cases which involved the validity of an enactment of that state wherein, after passage by the legislature, the word "or" was substituted for the word "and." The cases were Chicot County et al. v. Davies and Burks v. Jefferson County, 40 Ark. 200 (1882), which were heard and decided together. The Kansas Court explains these Arkansas cases as follows:

> "The bill in question conferred power on counties to subscribe to stock in railroads upon certain conditions. As originally introduced, it provided, that upon application of the company 'and' a hundred voters of the county, a popular vote should be had to determine whether the county should buy stock in the company. In the house an attempt was made to amend the bill by substituting the word 'or' for 'and,' so that had the bill been passed and signed

> by the governor in that form the election could have been called if either one of those contingencies occurred. The wording of the house amendment was such, however, that it was not intelligible. As the bill was finally enrolled and passed by both houses and signed by the governor the word 'and' was used so that both contingencies must happen in order to have the election. The argument was made that the bill was invalid because as passed by the house with the amendment in, it was not the bill that was signed by the governor. The constitution of Arkansas did not require amendments to bills to be entered upon the journals. The court to uphold the act held that it would presume that the house receded from its amendment and that the enrolled bill was finally passed by the house." 163 Kan. at 510.

In Robb, the Court also discussed other cases from the State of Arkansas, as well as cases from Nebraska and Wyoming, wherein the courts had upheld the validity of enactments, although, in each case, the bill signed by the governor was not the same bill that had been passed by the state legislature. The Court then said:

> "The foregoing are the authorities upon which plaintiffs rely. We shall consider whether they compel a judgment for plaintiffs. They seem to fall into two classifications, one where a typographical or clerical error was corrected--the other where by signing a bill with a large figure in it the governor was held to have in effect approved a bill with a smaller figure. The fact is, these opinions, most of them seem to have been based on reasons of expediency rather than any well-reasoned philosophy of constitutional law. The Arkansas cases are a good illustration of what happens when the first step is taken in constitutional law for reasons of expediency. In Haney v. The State, supra, the change was small and was easily made. When it came to Rice v. Road Imp. Dist., supra, and Athletic Min. & Smelt. Co. v. Sharp, supra, many years later, using the early case as a precedent an act quite different from the one approved

> by the governor was declared to be the law. In all of them the difference between the bill that was enrolled and signed by the governor and the bill that passed both houses and was held to be the law was only incidental to the provisions of the bill itself.
>
> "In the making of laws under our constitution the governor and the legislature are coordinate branches. That is the way the writers of the constitution intended it should be. The one is about as important as the other. The court will not for reasons of expediency reach a conclusion that will enable either one to bypass the other." (Emphasis added.) 163 Kan. at 515-516.

Moreover, in Harris v. Shanahan, 192 Kan. 183 (1963), the Court was called upon to determine the constitutional validity of the enactment of 1963 Senate Bill No. 440 (L. 1963, ch. 13), apportioning the state into 40 senatorial districts. There the enrolled bill signed by the governor did not contain the words "the city of Leawood in Johnson County, all of the territory in", which had been included in the bill passed by both the House and Senate. The Court said:

> "Counsel for both parties assert that this court has not only the power but also the duty to sustain the constitutionality of the act by supplying the words 'the city of Leawood in Johnson county, all of the territory in' as the same appears in line 49 of senate bill 440 and as passed by both houses but omitted therefrom when the bill was engrossed and enrolled." Id. at 194.

In rejecting counsel's assertion, the Court stated:

> "Generally speaking, courts have no right to correct errors made in an enrolled bill and they will ordinarily take the latter as they find it, and if not constitutionally enacted, will declare it void. (50 Am.Jur., Statutes, §§97, 232, 234, pp. 103, 219, 221; 82 C.J.S., Statutes, §60b, p. 94.) Nearly all the cases holding that errors and mistakes may be corrected deal with errors and mistakes apparent on the face of the legislative enactment,

either standing by itself or in connection with other well-known facts. Very few of such cases deal with the question whether the procedural steps in enacting the law have been followed; that is, whether the act signed by the governor was the act passed by the legislature. In other words, such cases deal in the main with the construction of the legislative enactment rather than the validity of the procedure or steps of its enactment. (State v. Wright, 62 Wyo. 112, 163 P.2d 190.) In State v. Hill, 189 Kan. 403, 369 P.2d 365, 91 A.L.R.2d 750, it was held that the construction of a statute, the function of a court to ascertain its scope and meaning, is not to be confused with the duty of determining its validity when measured by constitutional guaranties.

"We think that what was said and held in State, ex rel., v. Robb, 163 Kan. 502, 183 P.2d 223, is decisive of the question.

. . . .

"There, as here, it was argued that where the legislative records clearly show the legislative intent and affirmatively show the action taken was to include the amendment--in the instant case to include that part of the original bill pertaining to the city of Leawood--the enrolled bill can be impeached successfully to show that it was the intention of both houses and the governor that the bill as passed by the legislature should be construed to be the effective bill, otherwise a clerical employee or printer can effectively thwart the purpose of the legislature and the governor and give to such errant and unknown clerk or printer the power to veto legislation.

"The contention overlooks the fact that in the Robb case as well as in the instant case, a duly constituted committee of the legislature reported the bill, in the former case, to be correctly enrolled, and in the instant case, to be correctly engrossed and enrolled, when in truth and in fact they

> were not. Despite the fact that the mechanical working of engrossing bills is performed by clerical employees, the duly constituted committees of each body of the legislature cannot escape the responsibility of carefully examining all engrossed and enrolled bills. Had the committees done so in the Robb case and in the instant case, the omissions would have been discovered and timely corrected." (Emphasis added.) 192 Kan. at 196-198.

Likewise, in this case, had proper care been taken, the error could have been discovered and timely corrected. Thus, here, like in Robb and Shanahan, we are of the opinion the Court would again reject the assertion advanced in those cases.

Moreover, the following statements from Harris, supra, reveal the Court also rejected other assertions advanced by counsel. The Court said:

> "Efforts to distinguish the Robb case from the instant case because there the omission 'was an amendment,' because it 'dealt with an enactment--which would amend the general bonded debt limitation law' and 'was purely within the discretion of the legislature,' whereas in the instant case, 'the legislature was under a constitutional mandate to reapportion the senate,' or, because the omission left the original bill in the instant case less clear and effective 'for the purpose for which it was introduced,' are not well taken. Both cases deal with acts of the legislature which are subject to the requirements of the Constitution. The long and short of this case is that the bill passed by both houses of the legislature was not the bill approved and signed by the governor and this court has no authority to insert what was omitted. The requirements of Article 2, Section 14, are mandatory that the governor sign the same bill which passed the legislature. It follows that the enrolled bill the governor signed (Laws 1963, Ch. 13) was not made into law in the form and manner prescribed, and is a void enactment." (Emphasis added.) 192 Kan. at 200.

In this case, like in the cases of Robb and Harris, we are dealing with an act of the legislature which is "subject to the requirements of the Constitution." The "long and short" of this case is that

the bill passed by both houses of the 1979 Kansas Legislature was not the bill approved and signed by Governor Carlin. As the Governor did not sign the same bill which passed the legislature, the same bill never having been presented to him, the enrolled bill signed by the Governor (L. 1979, ch. 310, now appearing at K.S.A. 1980 Supp. 79-331), was not "made into law in the form and manner prescribed, and is a void enactment." Harris v. Shanahan, supra.

Finally, the Court in Harris makes an observation that, in our judgment, while perhaps being dicta, bears repetition herein:

> "Due to the nature of senate bill 440 and its importance to the people of the state, we have examined the question somewhat at length. It is to be deeply regretted that as important a law as this, covering a subject of great public interest, should, because of gross carelessness of someone, be wiped bodily from the statute book. But the court is not responsible for this; nor can it usurp the functions of the legislature or the governor, and, by shutting its eyes to the undisputed legislative record, declare a bill as passed by both houses of the legislature, which was never presented to the governor nor approved by him, to be a valid law. It is lamentable that error on the part of engrossing clerks and legislative committees should defeat the action of the legislature. But the strict rule calling for full compliance with constitutional requirements is, in the long run, a good one. In some cases it may work a hardship, but, by and large, it is beneficial to our republican form of government. (State ex rel. Foster v. Naftalin, supra.)" (Emphasis added.) 192 Kan. at 200.

Very truly yours,

Robert T. Stephan

ROBERT T. STEPHAN
Attorney General of Kansas

Rodney J. Bieker

Rodney J. Bieker
Assistant Attorney General

RTS:BJS:RJB:jm