



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 82- 56

The Honorable Larry F. Turnquist
State Representative, Sixty-Ninth District
State Capitol, Room 278-W
Topeka, Kansas

The Honorable Rex B. Hoy
State Representative, Twenty-Fourth District
State Capitol, Room 382-W
Topeka, Kansas

Re: Insurance--Agents--Requirement To Furnish Evidence
of Successful Completion of Minimum Educational
Courses

Synopsis: The requirements imposed by K.S.A. 40-240a et seq.
are minimum educational requirements, and the
exemption from compliance with said requirements,
set forth in K.S.A. 40-240e, is not, on its face,
arbitrary, capricious or unreasonable. Cited
herein: K.S.A. 40-240a, 40-240b, 40-240c, and
40-240e.

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Dear Representative Turnquist and Representative Hoy:

You request our opinion as to the constitutionality of K.S.A. 40-240e. Said statute is part of a 1976 act which imposes educational requirements on agents engaged in the sale of life insurance (including health and accident insurance), and is a "grandfather clause" which exempts certain licensees from compliance with the educational requirements. The statute provides as follows:

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"The provisions of K.S.A. 40-240a to 40-240d, inclusive, shall not apply to agents who have held a license to sell life insurance, including health and accident insurance, for ten (10) years on July 1, 1978."

The educational requirements imposed by the 1976 act are set forth in K.S.A. 40-240b, which statute provides, in part, that "[a]ll agents to whom this act applies must, within five years of initial licensing, furnish evidence to the insurance commissioner that they have successfully completed" one of ten alternative educational courses prescribed by the statute. K.S.A. 40-240c states that insurance agents licensed on the effective date of the act "shall have five years to comply with the educational requirements contained herein," and further provides as follows:

"Any agent who has previously successfully completed one of the requirements contained in K.S.A. 40-240b shall, upon evidence satisfactory to the insurance commissioner, be deemed to have complied with this act."
(Emphasis added.)

As is clear from the above-quoted statutory excerpt, any successful completion of the subject educational requirements, even if such completion occurred prior to licensure, is sufficient to comply with the 1976 act. Given this fact, it is evident that the requirements imposed by K.S.A. 40-240a et seq. are minimum educational requirements, not continuing education requirements. This fact is important, because we have previously opined that there is no rational basis for imposing differing continuing education requirements upon persons licensed to engage in a particular occupation or profession, but we have made no such statement regarding minimum educational requirements. See Kansas Attorney General Opinion No. 81-251.

"Grandfather clauses" are common in licensing statutes, and have been upheld except where, under the particular facts, an unreasonable, arbitrary or capricious classification has been created. See Kansas Attorney General Opinion No. 81-251 and authorities cited therein. The provisions of K.S.A. 40-240e create two classes of insurance agents for the purpose of imposing minimum educational requirements: agents who had held licenses to sell life insurance (including health and accident insurance) for ten years on July 1, 1978, and those who had not held licenses for the requisite period of time on July 1, 1978.

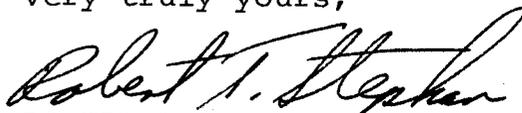
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The classification thereby created does not offend the principle of equal protection if there is reasonable basis therefor, and the classification is practical and not palpably arbitrary. See State ex rel. Schneider v. Liggett, 223 Kan. 610, 616 (1978); Manzanares v. Bell, 214 Kan. 589, 612 (1974).

In this regard, we are unable to state, as a matter of law, that the classification created by K.S.A. 40-240e lacks a reasonable basis or is arbitrary. The degree of correlation between holding a license for a period of ten years, and attainment of the knowledge which results from successful completion of the minimum educational requirements, is a factual matter to be considered by a court. Determining the reasonableness of the classification effected by K.S.A. 40-240e presents a mixed question of law and fact, and the appropriate forum for such a question is a court of law, wherein evidence and testimony could be taken and an informed judgment could be made.

In summary, it is our opinion that the requirements imposed by K.S.A. 40-240a et seq. are minimum educational requirements, and that the exemption from compliance with said requirements, set forth in K.S.A. 40-240e, is not, on its face, arbitrary, capricious or unreasonable.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
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RTS:BJS:TRH:jm