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

April 15, 1983

ATTORNEY GENERAL OPINION NO. 83- 59

The Honorable John Carlin
Governor of the State of Kansas
2nd Floor - Statehouse
Topeka, Kansas 66612

Re: Kansas Constitution -- Legislative Article -- Requirements for Passage of Bill

Synopsis: When the House of Representatives amended 1983 Senate Bill No. 384 so as to transform it from a bill relating to the collection of delinquent taxes owed by nonresidents into a bill providing for the imposition of a severance tax, a new bill was introduced. Thus, when said bill was passed by the House on the same day it was introduced, without the declaration of an emergency, serious questions are raised regarding the validity of this bill in light of Article 2, Section 15 of the Kansas Constitution. Cited herein: Kan. Const., Art. 2, §§15, 16, 1983 Senate Bill No. 384.

* * *

Dear Governor Carlin:

You have requested our opinion regarding the legislative procedure in passage of 1983 Senate Bill No. 384, which would impose and provide for the collection of a severance tax on coal, salt, oil and gas. Specifically, you are concerned whether this procedure has resulted in a violation of Article 2, Section 15 of the Kansas Constitution, which states:

> "No bill shall be passed on the day that it is introduced, unless in case of emergency declared by two-thirds of the members present in the house where a bill is pending."

Your concern regarding this constitutional requirement is prompted by the fact that, as introduced in the Senate, Senate Bill No. 384 concerned the collection of delinquent taxes owed by nonresidents. As introduced, this bill consisted of ten sections (including a repealer and effective date), and the title stated as follows:

> "AN ACT relating to taxation; relating to the collection of delinquent taxes owed to the state by persons not residing or domiciled in this state; authorizing the secretary of revenue to contract with debt collection agencies and to enter reciprocal agreements with other states for the collection of such taxes; amending K.S.A. 79-3614 and K.S.A. 1982 Supp. 79-1587 and 79-3234 and repealing the existing sections."

We note that this bill was amended by the Senate Committee on Assessment and Taxation and by the Senate Committee of the Whole prior to its passage by the Senate. It was further amended by the House Committee on Assessment and Taxation, to which the bill was referred upon its introduction in the House of Representatives. None of these amendments, however, affected the subject of the bill as expressed in its title. Accordingly, no amendments to the bill's title had been made at the time the bill was reported out of the House Committee on Assessment and Taxation.

To recount the subsequent legislative action regarding this bill, it is appropriate to refer to the legislative journals. The Journal of the House for April 4, 1983, indicates that "[o]n emergency motion of Rep. Hoagland, SB 247, 112, 44, 362, 10, 384 were advanced to Final Action on Bills and Concurrent Resolutions, subject to amendment, debate and roll call." (H.J., p. 669.) Thereafter, under the order of business "Final Action on Bills and Concurrent Resolutions," the House adopted the committee report to SB 384. Id. at 671. In addition, "on motion of Rep. Rolfs to amend, Rep. Braden offered a substitute motion to amend and SB 384 was amended . . ." by striking, in effect, all after the enacting clause and inserting in lieu thereof 15 new sections providing for the imposition and collection of a severance tax. Id. at 671-677. The title also was amended by striking all of its provisions except "AN ACT relating to taxation;" and substituting therefor the following:

> "imposing an excise tax upon the production of oil and gas from the earth or water of the state; providing for the levy and collection

> of such taxes and the administration and enforcement of the provisions of the act; prescribing penalties for violations thereof and providing for the use and disposition of revenues derived therefrom." Id. at 677.

By a roll call vote of 87 yeas and 35 nays, with 3 members absent or not voting, "[t]he bill passed, as amended." Id. at 678. As a consequence, we believe the House transformed SB 384 from a bill concerning the collection of delinquent taxes owed by nonresidents into a bill providing for the imposition and collection of a severance tax, and the threshold question for our consideration, therefore, is whether this action effected the introduction of a new bill.

In determining this question, we believe the issue to be resolved is whether the amendments made to SB 384 by the House on Final Action are germane to the subject of the original bill. This issue is most often addressed by the courts when considering whether a legislative act violates a constitutional requirement similar to Article 2, Section 16 of the Kansas Constitution, prohibiting a bill from containing more than one subject. As noted in 1A Sutherland Statutory Construction §17.03 (4th Ed.):

> "The general test used to determine whether the inclusion in an act of numerous provisions violates the constitutional prohibition against plurality of subject matter is that of determining whether the various provisions are germane to the subject expressed in the title. 'Germane' is defined as meaning in close relationship, appropriate, relevant, or pertinent to the general subject, and no portion of a bill not germane to the general subject can be given the force of law. The constitution is complied with if the various provisions relate to, and are a means of carrying out the general purpose of an enactment. 'When the subject is expressed in general terms, everything which is necessary to make a complete enactment in regard to it, or which results as a complement of the thought contained in the general expression, is included in and authorized by it.' If there is any reasonable basis for grouping the various matters together, and if the public will not be deceived, the act will be sustained. No accurate mechanical rule may be formulated by use of which the sufficiency of an act in relation to its title may be determined. Each case must be decided on its own peculiar facts." (Footnotes omitted.)

The germaneness of amendments to bills is a familiar proposition to the Kansas Legislature. Rule 2101 of the 1983-84 Rules of the Kansas House of Representatives states:

> "Germaneness. Amendments to bills and resolutions shall be germane to the subject of the bill or resolution. The principal test of whether an amendment is germane shall be its relationship to the subject of the bill or resolution, rather than to wording of the title thereof."

Similarly, we note the following relevant provisions of Rule 44 of the 1983-84 Rules of the Kansas Senate:

> "(1) Amendments to bills shall be germane to the subject of the bill being amended, except the fact that an amendment is to a section in the same chapter of Kansas Statutes Annotated as an existing section in the bill shall not automatically render the amendment germane."

In addition, the following rules of the Senate are particularly pertinent here:

> "Rule 72. Subject Change by Senate.--Whenever an amendment adopted by the Senate has materially changed the subject of a bill, the title of the bill so amended shall be read in the manner prescribed for the introduction of bills, and take its place upon the Calendar under the order of business Final Action.
>
> "Rule 73. Subject Change by House.--Whenever the House adopts amendments to a Senate bill which materially changes its subject, upon return of such bill to the Senate, the title of such bill shall be read in the manner prescribed for the introduction of bills and such bill shall be referred as provided in Rule 32.
>
> "Rule 74. Determination of When Subject of Bill Materially Changed.--The President may determine when a bill is subject to Rule 72 or 73."

In light of these rules, we note that the Journal of the House contains no indication that the issue of germaneness was raised regarding the House amendments to SB 384. However, the Journal of the Senate for April 5, 1983, indicates the Senate's receipt

of a message from the House announcing "passage of . . . SB 384 as amended" (S.J., p. 526), and it further recounts that:

> "Upon consideration of SB 384, the President announced he would not apply Rule 73 regarding material changes in the subject matter of a bill.
>
> "On motion of Senator Burke the Senate non-concurred in the House amendments to SB 384 and requested a conference committee be appointed." S.J., p. 542.

Hence, the legislative journals reveal that the legislature regarded the House amendments to SB 384 to be germane and appropriate. Nonetheless, the issue presented is not merely a question of compliance with pertinent legislative rules of procedure. Instead, the issue under consideration is a question of law that is appropriate for resolution by the courts. Are the amendments made by the House germane to the original subject of SB 384, or did they so alter the subject that the bill lost its identity and a new bill was created, thereby subjecting the new bill to scrutiny under Article 2, Section 15 of our constitution? We have no hesitancy in concluding that the action of the House effected the introduction of a new bill.

Although we are unaware of any Kansas case precisely determinative of this issue, we find the following statements of the Court in The State, ex rel., v. Akers, 92 Kan. 169 (1914), to be instructive:

> "The legislative history of chapter 259 shows that it was legally adopted by the legislature. The original bill was known as house bill No. 219. It was read three times in each branch of the legislature and on separate days. The main objection to the manner of its passage is, that in the senate the judiciary committee simply reported a substitute for house bill No. 219. It appears, however, that the substitute was germane to the title and that exactly the same result could have been accomplished by returning the original bill and recommending its passage with the amendments. The precise question was before the supreme court of Tennessee in a recent case. (Railroad v. Memphis, 126 Tenn. 267, 148 S.W. 662, 41 L.R.A., n.s., 828.) The language of the court in disposing of the contention is so pertinent that we adopt and approve it. In the opinion it was said:

> "'It is said the committee on municipal affairs simply reported a substitute for House Bill No. 175. The distinction sought to be made between reporting a substitute bill and an amendment by substitution is more fanciful than real. As stated, the title of the bill remained the same, and the substitute offered for the original is germane to the title, and is otherwise unobjectionable. The bill cannot be destroyed upon a mere matter of terminology. If it were competent, as is conceded, for the original bill to have been amended by substitution, so as to ingraft upon it the same matter that was contained in the substitute bill, we can see no substantial reason why it is not just as permissible to offer the same subject-matter under the original title as a substitute for the original bill.' (p. 293.)" (Emphasis added.) Id. at 209, 210.

Because of our Court's enthusiastic reliance upon the Tennessee case quoted above, we note other decisions of the Tennessee Supreme Court relevant to this subject. In Erwin v. State, 93 S.W. 73 (Tenn. 1906), the Tennessee court considered whether a bill had been enacted in compliance with pertinent requirements of that state's constitution. In so doing, it stated the following general principles:

> "Every bill has two parts, the title and the body.
>
> "The title must contain the subject of the proposed legislation, and that subject must be single. This was intended to serve a two-fold purpose. The subject must be expressed in the title, so that the members of the Legislature may have their attention drawn directly to the matter about which they are to concern themselves in the discharge of their legislative duties: a second purpose is that the people of the state may know what their representatives are doing, and may interpose, if they choose, by petition, or remonstrance. The title must be single, to prevent omnibus legislation and logrolling.
>
> "It is obvious that to serve these purposes, the title must be a constant quantity, not subject to amendment, or at least not subject to any alteration that will effect any substantial change in it. It fixes the identity

> of the bill. There may, indeed, be made a substantial change in a title, but if so, it becomes a new title, the caption of a new bill.
>
> "What is said in the constitutional provisions, quoted, concerning amendments, refers to the body of the bill. This, as a matter of course, may be amended in the house in which the bill originated. The Constitution also permits amendments to be engrafted upon it in the other house. No restriction is placed upon this power of amendment further than results from the rigidity of the title and the necessity of conforming thereto, and the requirement that there shall be a concurrence of the two houses upon the whole bill. One section may be stricken out and its place supplied by another containing a different provision; all may be stricken out except the title and the enacting clause, and new provisions inserted quite different from those which first constituted the body of the bill, but upon this liberty there rests one unyielding limitation, one imperious requirement. Every amendment, be it great or small, must harmonize with the title, must be germane to it, must fall within its scope.
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> "If an amendment foreign to the title be introduced, one of two results must follow; either the title must be so altered as to embrace it, or the bill, as it stands, will be vitiated by it; but if the title be so changed, the bill is no longer the same; the title is new, and the bill is radically different from the thing it was before." (Emphasis added.) Id. at 75, 76.

The Erwin decision has been relied upon with respect to the principles stated above in a number of subsequent decisions. See, e.g., Southern Ry. Co. v. City of Memphis, 148 S.W. 662 (Tenn. 1912); State v. Persica, 168 S.W. 1056 (Tenn. 1914); Tennessee Coal, Iron & R. Co. v. Hooper, 175 S.W. 1146 (Tenn. 1915); State v. City of Nashville, 210 S.W. 649 (Tenn. 1919); and Metro. Gov't of Nashville, Etc. v. Mitchell, 539 S.W.2d 20 (Tenn. 1976). In the latter case, the Tennessee court quoted portions of the above-quoted excerpt from Erwin and further stated:

> "Our cases have consistently given a different treatment to changes in the title or captions of bills from that given to changes in

> the bodies of bills. Thus, we have held that when the title or caption of a bill is altered 'substantially' or changed to introduce 'new or foreign matter,' the bill loses its identity and a new bill is thereby created which must, itself, be passed on three different days." (Citations omitted.) (Emphasis added.) 539 S.W. 2d at 21.

The principles enunciated in the foregoing Tennessee cases are entirely consistent with the rules applied by the Kansas Supreme Court in resolving questions arising under Article 2, Section 16 of the Kansas Constitution, which states in pertinent part:

> "No bill shall contain more than one subject, except appropriation bills and bills for revision or codification of statutes. The subject of each bill shall be expressed in its title."

Although this section of our constitution was amended in 1974, the essence of the requirements as to a single subject which must be expressed in the bill's title has remained unchanged since statehood. State ex rel. Stephan v. Carlin, 230 Kan. 352, 256-257 (1981). And the myriad of cases construing these requirements have consistently held that an act may contain "innumerable minor subjects, provided all these minor subjects are capable of being so combined and united as to form only one grand and comprehensive subject" [The State v. Barrett, 27 Kan. 213, 217 (1882)] and the single subject is expressed in the title. Id. As stated in Barrett:

> "Where a section of an act is assailed as being in contravention of said provision of §16, article 2 of the constitution, it is sufficient if it is germain [sic] to the single subject expressed in the title, and included therein, provided the act itself does not contain more than this single subject." Id. at 218.

We shall not burden this opinion with further recitation of cases to this effect. "Although Barrett is an old case it still accurately states the relevant law of Kansas." State ex rel. Stephan v. Thiessen, 228 Kan. 136, 143 (1980).

Clearly, then, our Court has recognized that a valid bill must contain but a single subject. All provisions of the bill must be germane to that subject, as expressed in its title. Thus, where provisions are added to a bill which are

foreign to the bill's subject, as expressed in its title, the title must be amended so as to redefine the bill's scope. However, once the title is amended to express the bill's new subject, it is our opinion "the bill is no longer the same; the title is new, and the bill is radically different from the thing it was before." Erwin v. State, supra at 76.

With respect to the House amendments to SB 384, it might be argued that the subject of the bill is "taxation" and that the provisions added by these amendments (i.e., imposition and collection of a severance tax) are germane to this subject. The fallacy of this argument can be illustrated by considering whether the original provisions of the bill concerning collection of delinquent taxes owed by nonresidents could have remained in the bill along with the severance tax provisions, without violating the constitutional proscription of plurality of subjects. If the severance tax provisions are to be regarded as germane to the subject of the bill as it was introduced in the Senate, then the original provisions and the amendatory provisions should be capable of co-existing in the same bill, assuming they do not conflict with one another. No such conflict is apparent; yet, we do not think it could be seriously contended that the original and amendatory provisions "can be so united and combined as to form only one single subject." State v. Barrett, supra at 217.

An analogous question was addressed in State, ex rel., v. Shanahan, 178 Kan. 400 (1955). There, the Court was considering a bill which originally repealed statutes on one subject and to which was added provisions repealing statutes on another subject. The Court rejected the contention that there was a single subject of the bill, as follows:

> "It is next argued that the 'subject' of the legislation is 'repeal'; and even if there are plurality of objects, the subject is single. This contention has been previously suggested, and discounted. The subject of the bill is the matter to which the legislation pertains. The subject of the bill as introduced by the Senate is the registration of motor vehicles brought into this state by nonresidents. The subject of the amendment added by the House related to the Kansas State Board of Review and to censorship of motion pictures by that agency. The amendment pertains to an entirely different subject matter than that of the bill as first introduced." Id. at 404.

In our judgment, therefore, the amendments made to SB 384 by the House are not germane to the subject of that bill. Hence, when the severance tax provisions were added and the bill's title was amended so as to reflect the substitution of these

provisions for those pertaining to collection of delinquent taxes owed by nonresidents, a new bill was created. Thus, we must consider whether the procedures attending the passage of SB 384 by the House were in concert with the requirements of Article 2, Section 15.

This constitutional section also was amended in 1974, but there have been no appellate court decisions construing the amended provisions. Prior to its amendment, this section read as follows:

> "§15. Reading of bills; suspension of rules. Every bill shall be read on three separate days in each house, unless in case of emergency. Two-thirds of the house where such bill is pending may, if deemed expedient, suspend the rules; but the reading of the bill by sections on its final passage, shall in no case be dispensed with." (Emphasis added.)

It is clear that original Section 15 of Article 2 focused on the actions of each house in acting upon a bill, independently of the actions of the other house regarding that bill. It did not concern joint action of both houses, but imposed requirements on each house. Even though significant wording changes were effected in this section by the 1974 revision of the legislative article of our constitution, we believe this section's scope has remained unchanged.

We are prompted to this conclusion not only by the plain language of the section, but also because of the reported deliberations of the legislative body which recommended the change in this section which ultimately was adopted by the electorate. The concurrent resolution which was submitted to the voters in 1974 was originated after several years of study by the Legislative Budget Committee. In its report to the 1974 Kansas Legislature, the following comments were made regarding the proposed changes in Section 15:

> "7. The antiquated provision that every bill shall be read on three separate days in each house has been eliminated. It is proposed that no bill shall be passed on the day it is introduced, unless an emergency is declared by a two-thirds vote of members present. (Section 15.)
>
> "The present 'three-readings' requirement predates modern printing and reproducing methods. Proposed Section 15 is not radically different from present practice." (Emphasis added.) Reports of Special Committees to the 1974 Kansas Legislature, p. 26-4.

Thus, we are of the opinion that no change in the essential scope of this section was effected by the 1974 amendment, and its proscription remains applicable to the actions of each house working independently of the other. Hence, it is clear that, by virtue of Section 15, neither house of the legislature may pass a bill on the same day it is introduced therein, except in an emergency declared by two-thirds of the members present in that house.

Applying this proscription to the actions of the House on April 4, 1983, regarding SB 384, several observations may be made. First, as we previously concluded, the House amendments to SB 384 transformed it from a bill relating to the collection of delinquent taxes owed by nonresidents to a bill imposing a severance tax, and that action amounted to the introduction of a new bill on April 4, 1983.

Second, the House and Senate Journals, as previously noted, conclusively show that the new bill was passed by the House on April 4, 1983 (H.J., p. 678; S.J., p. 526), the same day it was introduced.

Finally, the House Journal for April 4, 1983, is silent as to an emergency being declared by two-thirds of the members present in the House for the purpose of passing the new bill on the same day it was introduced. It is true that the House adopted an emergency motion to advance SB 384 to the order of business "Final Action on Bills and Concurrent Resolutions." (H.J., p. 669). However, that motion concerned a bill relating to the collection of delinquent taxes owed by nonresidents. That was the bill advanced to final action, and we find no indication in the House Journal for April 4, 1983, that an emergency motion was made regarding SB 384 after it had lost its identity as a measure pertaining to the collection of delinquent taxes and had been transformed into a severance tax bill.

The foregoing observations support a conclusion that the House passed a bill on the day it was introduced therein, without having declared an emergency by the requisite vote of its members, contrary to the requirements of Article 2, Section 15. However, such conclusion is necessarily predicated on an interpretation of this section of our constitution without the benefit of supporting case law, since Section 15 of Article 2 has not been construed by our appellate courts since its amendment in 1974. Further, "there is a strong presumption in favor of the validity of any bill passed by the legislature." State, ex rel., v. Shanahan, supra at 404. Hence, it must be recognized that our Court might interpret the language of this section in a way which would uphold the validity of SB 384.

Of course, without benefit of a definitive judicial construction of Article 2, Section 15, we cannot do more than indicate that arguments may be made on either side of this issue. In our judgment, however, the legislative procedure attending the passage of SB 384 raises serious questions regarding the constitutional validity of this bill. While it is possible that our Supreme Court might find that the bill's passage was in concert with the spirit and reason of the pertinent constitutional provision, the absence of judicial precedent precludes us from concluding, with any degree of certainty, as to the appropriate interpretation, particularly in light of prior cases which have strictly construed constitutional requirements. See, e.g., State v. Kearns, 229 Kan. 207 (1981) (strict construction of Article 2, Section 20 invalidated provisions of Campaign Finance Act) and State ex rel. v. Kirchner, 182 Kan. 622 (1958) (severance tax declared invalid because subject of bill not "clearly expressed" in title). Thus, it would not be unreasonable for the Court to find that this bill was passed in violation of constitutional requirements.

Very truly yours,

Robert T. Stephan

ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS

W Robert Alderson

W. Robert Alderson
First Deputy Attorney General

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