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ATTORNEY GENERAL OPINION NO. 83- 78

Honorable Robert G. Frey
Representative, 125th District
Room 112-S, State Capitol
Topeka, Kansas

Honorable Larry F. Turnquist
Representative, 6th District
Room 278-W, State Capitol
Topeka, Kansas

Re: Kansas Constitution--Legislature--One Subject in
a Bill Requirement

Kansas Constitution--Legislature--Delegation of
Legislative Power

Synopsis: As introduced by the House Committee on Assessment
and Taxation, 1983 House Bill No. 2053 does not
involve an unlawful delegation of legislative power
and does not contain more than one subject. Cited
herein: 1983 House Bill No. 2053, Kan. Const.,
Art. 2, §1, Art. 2, §16.

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Dear Representatives Frey and Turnquist:

You raise two constitutional questions in regard to 1983 House
Bill No. 2053 (HB 2053), the title of which is:

"AN ACT relating to the financing of public
schools; authorizing the levy of individual

Honorable Robert G. Frey
Honorable Larry F. Turnquist
Page Two

income taxes by school districts; imposing a tax upon the Kansas taxable income of corporations and fiduciaries; imposing a tax upon the privilege of doing business in this state by insurance companies and certain financial institutions; providing duties for certain state officers relating to the administration thereof."

We note initially that the provisions of this bill have been proposed in several previous sessions of the legislature, including the most recent one.

The bill would not only authorize the levy of an individual income tax by school districts, but also would prescribe the levy of certain state taxes, if the secretary of revenue were to determine that school districts, having a combined total enrollment equal to not less than 50% of the total number of pupils enrolled in all school districts within the state, have imposed an individual income tax under the provisions of the act. This prompts you to ask: (1) Whether the inclusion of both a "local" school district tax and several state taxes in the same bill violates the constitutional prohibition against a bill containing more than one subject; and (2) whether conditioning the operation of the state taxes upon action by school districts prescribes an unlawful delegation of legislative authority.

We begin with the second question which involves Article 2, Section 1, of the Kansas Constitution. That section provides: "The legislative power of this state shall be vested in a house of representatives and senate."

In regard to this constitutional provision, the Kansas Supreme Court has ruled specifically that, "[w]hile the legislature may not delegate its power to make a law, it may make a law to become operative on the happening of a certain contingency or future event." State v. Dumler, 221 Kan. 386, Syl. ¶3 (1977). This case involved the provisions of K.S.A. 1974 Supp. 8-1336 (L. 1974, ch. 29, §3), which fixed the maximum speed limit on the highways of this state at 55 miles per hour and then provided:

"In the event that the Congress of the United States shall establish a maximum speed limit greater or less than the limit prescribed by this paragraph, the state highway commission may adopt a resolution, subject to the approval of the governor, establishing such speed limit as the maximum speed limit of this state"

Honorable Robert G. Frey
Honorable Larry F. Turnquist
Page Three

In rejecting the argument that the above-quoted provisions were an unconstitutional delegation of legislative authority by the state legislature to the United States Congress, the Court said:

"[T]he effectiveness of a statute may be made to depend on the coming into existence of some specific future fact, event, or condition capable of identification or ascertainment. . . . [I]t is now settled beyond dispute by both state and federal decisions that the legislature may prescribe a rule to be applied according to the existence or nonexistence of some fact which some officer or board is required to ascertain. . . . Here the legislature, rather than delegating legislative power to the Congress, has simply enacted a law to become operational on the happening of a certain contingency or future event."
Id. at 392-393.

The same rule is stated and applied in Colorado Interstate Gas Co. v. State Corporation Comm., 192 Kan. 29, 37 (1963); Water District No. 1 v. Robb, 182 Kan. 2, Syl. ¶6 (1957); City of Pittsburg v. Robb, 143 Kan. 1 (1936) and Phoenix Ins. Co. v. Welch, 29 Kan. 672 (1883).

It is our judgment that here, as in Dumler, the bill, rather than delegating legislative power to school districts, simply prescribes taxes which will be levied on the fulfillment of a certain contingency. Thus, it is our opinion that this bill does not involve an unlawful delegation of legislative authority.

The question of whether this bill contains more than one subject is much more difficult to answer. Article 2, Section 16, of the Kansas Constitution, in part relevant to your inquiry, provides: "No bill shall contain more than one subject"

In general terms, the Supreme Court has stated that this provision of the state constitution prohibits the legislature from "intermixing objects of legislation in the same act which have no relation to each other." State ex rel. Stephan v. Thiessen, 228 Kan. 136, 142 (1980), quoting Garten Enterprises, Inc. v. City of Kansas City, 219 Kan. 620, 622 (1976).

Also, in Philpin v. McCarty, 24 Kan. *393 (1880), the Court held that the "one subject" rule of Art. 2, §16, was mandatory. Then, the Court said:

Honorable Robert G. Frey
Honorable Larry F. Turnquist
Page Four

"Yet this constitutional requirement is not to be enforced in any narrow or technical spirit. It was introduced to prevent a certain abuse, and it should be construed so as to guard against that abuse, and not to embarrass or obstruct needed legislation. That abuse was this: Ofttimes a matter of merit and commanding general confidence was yoked to something unworthy, and by this union the latter was carried through on the strength of the former. This provision was designed to prevent this, to make every measure stand upon its own merits, and to cut off omnibus legislation. Of course, where all the different matters of the bill are clearly expressed in the title, there is no danger of surreptitious legislation, for all are advised by the title of what legislation is proposed. But two measures entirely foreign to each other cannot now be joined in one act. They must be presented separately, and a separate vote had upon each. The assent of a majority of each house must be recorded before any proposition passes into a law, and it must be so recorded separately upon each independent proposition. An assent to two independent matters jointly will make neither of them a law." Id. at *402.

The abuse identified in the above-quoted cases was quite clearly evident in the act held unconstitutional in Thiessen, supra. There, as indicated by the governor and held by the Supreme Court, a matter of questionable legislative merit was tied to a matter having considerable support. Consistent with the intent and purpose of the one subject in a bill requirement of Art. 2, §16, the Court struck down the legislation.

In Thiessen, however, and other cases involving this restriction of legislative power, the Court indicated:

"[T]he provision must not be construed or enforced in any narrow or technical spirit, but must be construed liberally on the one side, so as to guard against the abuse intended to be prevented by it, and liberally on the other side, so as not to embarrass or obstruct needed legislation." 228 Kan. at 143, quoting State v. Barrett, 27 Kan. 213 (1882).

Honorable Robert G. Frey
Honorable Larry F. Turnquist
Page Five

Also, the Court, in several cases, has held that a single act may include several matters so long as all those matters can be united and combined as to form only one single subject. See State, ex rel., v. Board of Education, 173 Kan. 780 (1953) and the cases cited therein at 785, and Getty v. Holcomb, 79 Kan. 224, 226 (1908).

The foregoing are the general principles enunciated by the Court in regard to this clause of Article 2, §16. Statement of the principles is simple. Application of the principles to the provisions of a particular bill, however, is extremely difficult. Such difficulty is reflected clearly by comparing the following cases of the Supreme Court, in which one bill concerning liquor control was upheld, while another similar law was struck down: State v. Barrett, 27 Kan. 213 (1882) and State v. Topeka Club, 82 Kan. 756, 760 (1910). Moreover, the extent to which the Court will go in upholding a bill which appears to contain more than one subject is indicated by School District v. Atzenweiler, 67 Kan. 609 (1903) and State v. Davis, 116 Kan. 663 (1924). Thus, except in those instances where it clearly appears that two unrelated matters have been combined into a single piece of legislation and "logrolling" is clearly evident, it is very difficult to predict, with any degree of certainty, whether the Court will sustain or invalidate a particular bill.

In the case of HB 2053, a strong argument can be made that the bill contains only one subject, i.e., the taxation of incomes for the purpose of financing public schools. It should be observed that each tax prescribed in the act is a tax upon income, be it the income of individuals, corporations, fiduciaries, state or federal banks, trust companies, savings and loan associations, or insurance companies. Each tax is a tax based upon income. Moreover, the proceeds of each tax imposed under this bill are to be used only to finance public schools. (See Section 13.) The tax proceeds can be used for no other purpose. Thus, liberally construed, this bill relates only to the taxation of incomes for the purpose of financing public schools.

On the other hand, a strong argument can be made that this bill contains numerous, separate subjects. Specifically, it can be argued that this bill concerns not only the subject of authorizing local boards of education to impose an individual income tax, but also the separate subject of imposing state income and privilege taxes upon corporations, fiduciaries, insurance companies and various financial institutions. The argument, of course, would be that the subject of authorizing

Honorable Robert G. Frey
Honorable Larry F. Turnquist
Page Six

local school boards to impose an individual income tax, is a separate and distinct subject from the imposition of state income and privilege taxes upon corporations, fiduciaries, insurance companies and various financial institutions.

Moreover, taking a very restrictive attitude, it could be argued that the levy of an income tax upon the incomes of corporations and fiduciaries is a separate subject from the levy of privilege taxes upon banks, trust companies, savings and loan association, and insurance companies. However, HB 2053 prescribes all three of these taxes.

Finally, it can be noted that this bill provides for local revenue to those school districts whose electors approve the local-option individual income tax, while it also provides state funds for all school districts, if the state taxes are levied. See Section 13.

We believe the opposing arguments regarding the validity of this bill are each quite compelling. However, two considerations lead us to believe that our courts would uphold HB 2053, if challenged as containing more than one subject. First, it is well-settled that the Court,

" . . . start[s] with the proposition that the constitutionality of a statute is presumed; that all doubts must be resolved in favor of its validity; and before the statute may be stricken, it must clearly appear the statute violates the Constitution. It is the court's duty to uphold the statute under attack, if possible, rather than defeat it. If there is any reasonable way a statute may be construed constitutionally permissible, that should be done." (Emphasis added.)
State ex rel. Stephan v. Martin, 230 Kan. 747, Syl. ¶2 (1982).

Viewing this bill as containing the single subject of taxing incomes to provide for the financing of public schools renders the bill constitutional. When viewed in this perspective, it does not "clearly appear" that this bill violates the Constitution. Therefore, the "duty" of the Court is to uphold the legislation.

Second, the purposes of the one subject in a bill requirement of Article 2, §16, are:

Honorable Robert G. Frey
Honorable Larry F. Turnquist
Page Seven

" . . . the prevention of a matter of legislative merit from being tied to an unworthy matter, the prevention of hodge-podge or log-rolling legislation, the prevention of surreptitious legislation, and the lessening of improper influences which may result from intermixing objects of legislation in the same act which have no relation to each other." State ex rel. Stephan v. Thiessen, 228 Kan. 136, 142 (1980), quoting Garten Enterprises, Inc. v. City of Kansas City, 219 Kan. 620, 622 (1976).

More specifically, in Shrout v. Rinker, 148 Kan. 820 (1938), the Court said:

"The reason for the constitutional provision that an act shall not contain more than one subject . . . is to prevent two or more unrelated subjects being covered in an act so that members of the legislature would feel that they should vote for a bill which contained a provision to which they were opposed in order to secure the enactment of the bill with some provisions they considered important." Id. at 822.

We are of the opinion that the provisions of HB 2053 do not place legislators in the situation described in Shrout, supra, and evidenced in State ex rel. Stephan v. Thiessen, supra. Moreover, this legislation appears to be clear, and not surreptitious in any regard.

This bill simply requires each member of the legislature to decide whether public schools should be financed, in part, by the taxation of incomes. If a legislator believes this principle is sound public policy, he or she should vote for the bill. If he or she believes otherwise, the legislator should vote against the bill. Thus, each legislator is required to consider only one subject---financing public schools through the levy of income taxes. He or she is not required to consider two or more matters in weighing the merits of this bill.

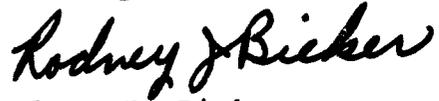
Consequently, we are of the opinion that 1983 House Bill No. 2053 would not be declared invalid under the clause of Article 2, Section 16, of the Kansas Constitution which requires bills to contain not more than one subject.

Honorable Robert G. Frey
Honorable Larry F. Turnquist
Page Eight

Thus, in summary, it is our opinion that 1983 House Bill No. 2053 does not involve an unlawful delegation of legislative power and does not contain more than one subject.

Very truly yours,


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