



STATE OF KANSAS

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July 8, 1988

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ATTORNEY GENERAL OPINION NO. 88-95

Joe F. Jenkins, II
Chairman, Abstracter's Board of Examiners
Title Building, 727 Ann Ave.
Kansas City, Kansas 66101-3066

Re: Insurance -- General Provisions Relative to
Casualty, Surety and Fidelity Companies -- Purpose
of Act; Casualty Insurance Defined -- Title
Insurance; Constitutionality

Synopsis: The act relating to insurance, concerning captive
insurance companies and the regulation of certain
title insurance rates, does not violate the
provisions of the Kansas Constitution regarding the
effective date of a bill, the single-subject
requirement, or uniformity of application. Cited
herein: K.S.A. 1987 Supp. 40-252; K.S.A.
40-1111, as amended by L. 1988, ch. 156, §19;
K.A.R. 1987 Supp. 40-1-9; L. 1988, ch. 156; Kan.
Const., Art. 2, §§16, 17, 19; Kan. Const.,
Art. 2, §17 (1859).

* * *

Dear Mr. Jenkins:

As Chairman for the Abstracter's Board of Examiners, you have
requested our opinion concerning K.S.A. 40-1111, as amended by
1988 S.B. 489 (L. 1988, ch. 156). Specifically, you have
asked whether the law violates three provisions of the Kansas
Constitution, namely, Article 2, §§16, 17 and 19. This new

law regulates captive insurance companies and certain title insurance rates.

At the outset, we note that the "constitutionality of a statute is presumed, and all doubts must be resolved in favor of its validity. Before a statute may be stricken down, it must clearly appear the statute violates the Constitution." Kansas Malpractice Victim's Coalition v. Bell, ___ Kan. (Case No. 61,945) (1988) slip opinion, at page 11. See Tri-State Hotel Co. v. Londerholm, 195 Kan. 748, 760 (1965); Parker v. Continental Casualty Co., 191 Kan. 674, 680 (1963).

Your first inquiry is whether the act has two effective dates and therefore violates Article 2, §19 of the Kansas Constitution, which states,

"No act shall take effect until the enacting bill is published as provided by law." Kan. Const., Art. 2, § 19.

This section has been construed to mean that an entire bill must take effect at the same time. Parker, 191 Kan. at 677-680; Comm'rs of Miami Co. v. Hiner, 54 Kan. 334, 336 (1894); Finnegan v. Sale, 54 Kan. 420, 421 (1894). Even though an act must take effect in its entirety at a singular, definite time, the legislature may, as a matter of policy, determine that certain provisions of the act should become actively operative at different times. As held in State v. Newbold, 56 Kan. 71 (1895), the legislature would undoubtedly have the power to pass amendments becoming operative at different times by making separate enactments with various effective dates. However, the court held that no "single reason exists why this may not be done by a single act." 56 Kan. at 73. We believe that the act in question is not invalid as violating Article 2, §19. By the terms of the act, it is effective after publication. L. 1988, ch. 156, §21. While the provisions of sections 19 and 20 are not operative until July 1, 1989, those sections are laws of this state as of the date published in the statute book.

Your second inquiry is whether the act contains more than one subject in violation of Article 2, §16 of the Kansas Constitution. The two-subject analysis was recently set forth and fully explained in Kansas Attorney General Opinion No. 88-74, wherein we stated that a statute should not be declared invalid under Article 2, §19, unless invalidity is manifest. The purposes of the constitutional provision include

"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." Garter Enterprises, Inc. v. City of Kansas City, 219 Kan. 620, 622 (1976).

We opined that legislation concerning the regulation of animal dealers and the prohibition of certain acts regarding certain animal vaccines could properly be enacted in the same bill, as both subjects relate to animal health. For the same reasons, we believe that provisions concerning captive insurance companies and the regulation of title insurance rates may be enacted in the same bill, as both subjects relate to the regulation of insurance by the Kansas Department of Insurance.

Your third inquiry is whether the act is unconstitutional, since section 19(b), regarding title insurance, applies only in counties having a population of more than 150,000. Section 19 amends K.S.A. 40-1111, adding title insurance to the definition of casualty insurance for purposes of rate regulation. Subsection 19(d) provides that "premium", for purposes of regulating rates and for determining the applicable premium tax, includes all "charges made in connection with issuance, sale and servicing of title insurance policies. . . ." L. 1988, ch. 156, § 19(d). These changes are not considered part of the premium for the tax imposed by K.S.A. 1987 Supp. 40-252, which is in contravention of K.A.R. 1987 Supp. 40-1-9. In short, only the risk portion of the premium is subject to the premium tax, but other charges are subject to regulation. These considerations apply only in counties having a population of more than 150,000. You ask whether the distinction between counties violates Article 2, §17.

Bearing in mind the presumption of constitutionality, we note that the courts in this state have not announced a clear test for construing legislative acts in light of that constitutional provision. In Edwards County Comm'rs v. Simmons, 159 Kan. 41 (1944), the Court held that an act applying only to public utility corporations operating in not more than four counties did not violate Article 2, §17. It was held that, in order to strike the statute on that ground, the court would have to find such classification "arbitrary, fictitious, and wholly without substantial basis." 159 Kan.

at 51. In State ex rel., v. Russell, 119 Kan. 266 (1925), the court held that an act differentiating counties by population for purposes of relocating the county seat did not violate section 17 of Article 2 (1859). While section 17 has undergone revisions since its original adoption, the first sentence, upon which Russell was decided, and upon which the non-uniformity issue arises, has not changed. That sentence states,

"All laws of a general nature shall have a uniform operation throughout the state. . . ." Kan. Const., Art. 2, § 17.


In Russell, the court noted,

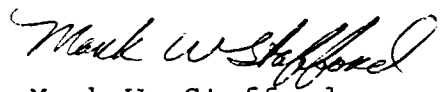
"The classification of the statute now under consideration is based on population. The statute may now apply to only one county; next year it may apply to two; in the future, it will apply to any county which comes within its provisions. For that reason, the statute is general and operates uniformly in all counties to which it applies. It does not violate section 17 of article 2 of the constitution of this state." 119 Kan. at 268.

Since we cannot say that the classification of counties in L. 1988, Ch. 156 is arbitrary, fictitious, and wholly without substantial basis, and since the statute operates uniformly in all counties in which it applies, we believe that the presumption of constitutionality controls, and the act does not violate Article 2, §17 of the Kansas Constitution.

In conclusion, it is our opinion that the act relating to insurance concerning captive insurance companies and the regulation of certain title insurance rates does not violate the provisions of the Kansas Constitution regarding the effective date of a bill, the single-subject requirement, or uniformity of application.

Very truly yours,


ROBERT T. STEPHAN
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Mark W. Stafford
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