



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

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MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
TELECOPIER: 296-6296

ATTORNEY GENERAL OPINION NO. 89- 90

The Honorable Vernon L. Williams
State Representative, Ninety-First District
2402 Coolidge Avenue
Wichita, Kansas 67204

Re: Constitution of the State of Kansas--Legislative--
Subject and Title of Bills; 1989 House Bill No. 2454

Oil and Gas--Oil and Gas Wells; Regulatory
Provisions, Miscellaneous Regulatory Provisions--
Transportation of Gas; Pressure; Constitutionality
of 1989 House Bill No. 2454

Synopsis: 1989 House Bill No. 2454 pertaining to maintenance of natural gas pipelines and establishment of the Citizens' Utility Ratepayer Board (CURB) does not violate Art. 2, §16 of the Kansas Constitution which prohibits a bill from containing more than one subject. Though arguably tenuous, we believe the sections addressing gas pipeline maintenance are germane to those creating a board concerned with the cost of utilities in that both are encompassed under the subject and title "relating to public utilities." As such, since the question of how the bill evolved is not relevant to the bill's constitutionality, we believe the connection sufficient to cause the courts to uphold the legislation as constitutional. Cited herein: K.S.A. 55-112, as amended by 1989 H.B. 2454; Kan. Const., Art. 2, §16; 1989 H.B. 2454; 1989 S.B. 105; L. 1982, ch. 144; L. 1985, ch. 48; L. 1982, ch. 282; L. 1978, ch. 323.

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Dear Representative Williams:

As State Representative for the Ninety-First District, you request our opinion regarding the constitutionality of 1989 House Bill No. 2454. Specifically you inquire whether the bill contains more than one subject in contravention of Article 2, §16 of the Kansas Constitution which provides:

"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. No law shall be revived or amended, unless the new act contain the entire act revived or the section or sections amended, and the section or sections so amended shall be repealed. The provisions of this section shall be liberally construed to effectuate the acts of the legislature."

You indicate that 1989 House Bill No. 2454 (H.B. 2454) deals with first, the transportation or conduct of natural gas through pipelines and the maintenance of certain pipelines and second, the establishment of a new state board, the Citizens' Utility Ratepayer Board (CURB), to represent residential and small commercial customers before the Kansas Corporation Commission. You further note that the provisions establishing the CURB were originally found in 1989 Senate Bill No. 105 and were amended into H.B. 2454.

The test to determine whether the one subject rule has been violated involves a review of the legislation to determine whether a plurality of subject exists. Generally, if an act embraces two or more dissimilar and discordant subjects, that by no fair intentment can be considered to have any legitimate connection with or relation to each other, it violates the one subject rule. In order to comply with the rule none of the provisions of an act can be read as relating or germane to any other subject than the one named in the title. 73 Am.Jur.2d Statutes, §125; see State v. Reeves, 233 Kan. 972, 978 (1983), where the court applies these general principles as stated in Am.Jur.2d.

Accordingly, we must review 1989 H.B. No. 2454. The first two sections amend K.S.A. 55-112 that deals with the transportation of natural gas by any person, persons, firm,

company or corporation engaged in drilling, piping, transporting, using or selling natural gas. Section one incorporates the minimum federal safety standards for the transportation of natural gas by pipeline found at 49 C.F.R. part 192 (10-1-88 Edition) by requiring the transportation of the natural gas through materials listed therein and requiring pressure testing of the pipe be done in accordance with the criteria provided therein. Section two adopts the definitional section found in part 192.3 of the federal code, charges full responsibility for maintenance of all pipelines to the public utility, municipal corporation, or quasi-municipal corporation which renders gas utility service to residential premises, and excepts cities of the third class from certain pipeline maintenance responsibilities.

Sections three through six deal with the establishment of a citizens' utility ratepayer board. Section three sets forth the composition of the board as consisting of five members appointed by the Governor with authority to recommend legislation as well as employ an attorney to [section four] represent residential and small commercial ratepayers before the state corporation commission at hearings or in complaint cases. In addition counsel can intervene in and initiate cases before the state corporation commission, including rate increase requests and formal complaint cases. Counsel can also seek rehearings or judicial review from orders issued. Section five removes from the Board any authority to take any action that concerns electric or telephone cooperations with membership of less than 15,000. Section six provides for the expiration of sections three through six on July 1, 1991.

In applying the test stated above we must look at how the Kansas Supreme Court has utilized the test in various circumstances. The most recent opinion in which the Court thoroughly examined Art. 2, §16 is State v. Reeves, 233 Kan. 972 (1973). In that case the court discussed the constitutionality of 1982 Senate Bill No. 699 (L. 1982, ch. 144), entitled as follows:

"'An Act relating to certain alcohol and drug-related traffic offenses; relating to penalties for certain prohibited acts; providing for the establishment of an alcohol and drug safety action program; amending'. . . ." 233 Kan. at 973.

The court reviewed each of the 23 sections of the bill to determine whether it contained more than one subject. The bill amended the procedures and grounds for suspending drivers' licenses, established a motor vehicle operator's implied consent to submit to a blood alcohol test, and set the procedures for the test. Other provisions concerned the admission of and weight to be given evidence of drivers' blood alcohol content, defined "habitual violator", and revised the penalties for driving under the influence. The bill also amended several statutes regarding diversion agreements, such as contents, admissibility into evidence, and violation of municipal ordinances. A state alcohol and drug safety action program and fees to fund the program were also established by the legislation. In addition, 1982 S.B. 699 amended the statutes governing appeals to the district court.

In ruling that the legislation was constitutional, the court in Reeves cited State, ex rel. v. Kansas Turnpike Authority, 176 Kan. 683, 697 (1954), and stated:

"[A]rt. 2, §16, should not be construed narrowly or technically to invalidate proper and needful legislation, and that where the subject of the legislation is germane to other provisions, the act is not objectionable as containing more than the one named in the title." 233 Kan. at 978.

The court in Reeves concluded as follows:

"These provisions are all germane to the broad encompassing subject of alcohol and drug-related traffic offenses. None of the revisions to existing statutes or newly enacted provisions contained in the act can be said to be so diverse or dissimilar as to have no legitimate connection or relation to the subject of alcohol or drug-related traffic offenses." 233 Kan. at 980. (Emphasis added.)

In State v. Larson, 12 Kan. App. 2d 198 (1987), 1985 Senate Bill No. 127 (L. 1985, ch. 48), a statute under which Stanley Larson was convicted for driving with a blood or breath alcohol concentration of .10 or above was challenged as

unconstitutional for containing more than one subject. In upholding the legislation, the court without reviewing the sections of the legislation quoted from State v. Reeves: "All of the revisions to existing statutes and newly enacted provisions contained in the act relate in some way to the comprehensive subject of alcohol and drug-related traffic offenses and prosecution thereof." 233 Kan. at 979. The title of the bill read as follows:

"An Act relating to certain alcohol and drug related offenses involving motor vehicles; concerning certain tests related thereto and providing penalties for refusal to submit thereto; prohibiting certain acts and providing penalties for violations; concerning diversion of certain prosecutions and conditions thereof. . . ."

Clearly the court in this case found the provisions of this act germane to one comprehensive subject.

In State ex rel. Stephan v. Board of Lyon County Comm'rs, 234 Kan. 732 (1984), it was argued that L. 1982, ch. 282 contained more than one subject because the bill dealt with out-district tuition for community colleges and the municipal university, and also contained a provision that such institutions could enter into agreements with state agencies to provide instruction for payment. The court found that the act did "not offend article 2, section 16" because the provision in question did concern out-district tuition when the state pays for the instruction, rendering all the sections of the bill as concerned with the single subject of the financing of community colleges and municipal universities. The defendant also argued that Art. 2, §16 was violated because the legislature consolidated several bills into the act at the close of the session. In rejecting this argument, the court stated:

"There is absolutely no indication, however, that a matter of legislative merit was tied to an unworthy matter or that matters have no relation to each other were intermixed. No legislative history or extrinsic evidence of how the act evolved is necessary or relevant where the act contains no unrelated or unworthy

matters and is clear on its face."
(Emphasis added.) 234 Kan. at 740.

Hence, a determination that more than one subject exists in the legislation needs to be made from the legislation, without considering how the act evolved.

However, once two subjects have been found, legislative history may be used to support the violation. The Court found two subjects in State ex rel. Stephan v. Thiessen, 228 Kan. 136 (1980), when asked whether 1978 House Bill No. 3129 (L. 1978, ch. 323) violated the one subject rule. The first four sections of the bill enacted new statutes concerning release on recognizance and supervised released programs. The remaining two-thirds of the bill dealt with the Kansas law enforcement training center and its funding. Focusing on the original titles to the two bills in question the court noted that one bill was defeated by the Senate, before the two bills were merged. In Thiessen the title of the bill in question read "An Act relating to crimes, authorizing certain release on recognizance and supervised release programs and procedures; amending and supplementing the Kansas law enforcement training center and advisory commission act; amending" 228 Kan. at 137. The court ruled that the bill was unconstitutional:

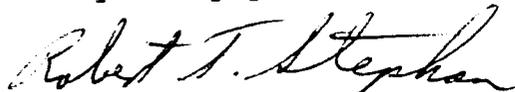
"These are two separate subjects which cannot lawfully be united under the broad title 'crimes.' Significantly, no crimes are defined in the act and no provision in the act amends or alters the Kansas Criminal Code which is located in Chapter 21 of the Kansas statutes." 228 Kan. at 143-144.

While these constitute only a few of the cases where legislation has been challenged under the one subject rule, they establish important principles: the legislation must be considered on its face; it must relate or be germane to that expressed in the title; if all the topics in the act relate or are germane to each, there is no relevance given to how the legislation evolved. (See also Attorney General Opinion No. 88-74).

Applying the principles the courts have used to determine whether a bill contains more than one subject, we find that 1989 H.B. 2454 meets the one-subject requirement of Art. 2, §16. The test of compliance with the constitutional mandate

of singleness of subject is that "none of the provisions of an act can be read as relating or germane to any other subject than the one named in the title." State v. Reeves, 223 Kan. at 978. The title of H.B. 2454 reads as follows: "An Act concerning public utilities; relating to natural gas; establishing the citizens' utility ratepayer board; amending K.S.A. 55-112 and repealing the existing section." The title in question states that the bill contains subject matter that concerns public utilities. Unlike Thiessen where the bill erroneously stated the legislation concerned "crimes," both the bills combined in the final version of 1989 H.B. 2454 concern public utilities. The connection, however tenuous, between the maintenance of pipelines transporting natural gas and a board concerned with the cost of utilities is that both these topics relate to public utilities. Therefore, based on recent court decisions we must conclude that 1989 House Bill No. 2454 does not violate Art. 2, §16 of the Kansas Constitution.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Guen Easley
Assistant Attorney General

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