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December 2, 1991

ATTORNEY GENERAL OPINION NO. 91- 153

The Honorable Joann Flower
State Representative, Forty-Seventh District
Rt. 2, Box 5
Oskaloosa, Kansas 66066

Re: Elections--Election Campaign Finance; General--Contributions to Legislators and Candidates for Legislature Between January 1 and May 15 by Lobbyists and Political Committees Prohibited

Synopsis: K.S.A. 1990 Supp. 25-4153a prohibits contributions (to legislators, candidates for legislative seats, and their committees) by registered lobbyists or political committees while the legislature is in session. This prohibition is not a violation of First Amendment rights of free speech and freedom of association. Cited herein: K.S.A. 1990 Supp. 25-4153a; U.S. Const., First Amend.

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Dear Representative Flower:

You request our opinion as to the constitutionality of K.S.A. 1990 Supp. 25-4153a. Specifically, you suggest that the statute may violate First Amendment rights of lobbyists and political committees.

K.S.A. 1990 Supp. 25-4153a prohibits contributions by registered lobbyists and political committees as follows:

> "No registered lobbyists or political committee shall make a contribution as defined by subsection (d) of K.S.A. 21-4143 and amendments thereto to any legislator, candidate for membership in the senate or house of representatives or candidate committee for any such legislator or candidate after January 1 and prior to May 15 of any year or at any other time in which the legislature is in session and no such legislator, candidate or committee shall accept any contribution as defined by subsection (d) of K.S.A. 25-4143 and amendments thereto from any registered lobbyists or political committee during such period."

In Buckley v. Valeo, 424 U.S. 1, 46 L.Ed.2d 659 (1976), the U.S. Supreme Court considered the constitutionality of various federal election campaign laws. The court upheld laws that limit the amount of money a person may contribute to an election candidate and that require disclosure of a contributor's name. While K.S.A. 1990 Supp. 25-4153a involves a periodic prohibition on contributions rather than a limitation on the amount of contributions, the analysis in the Buckley case can, in our judgment, be utilized in determining whether the aforesaid statute infringes upon First Amendment rights of free speech and free association.

In Buckley, the court stated that "neither the right to associate or the right to participate in political activities is absolute," and that "even a significant interference with protected rights of political association may be sustained if the state demonstrates a sufficiently important interest and employs means closely drawn to avoid unnecessary abridgement of associational freedoms." 46 L.Ed.2d at 691. The "important interest" which the court cited in upholding the contribution limitations of federal election campaign laws was the prevention of quid pro quo corruption and the appearance of quid pro quo corruption. Quid pro quo corruption refers to dollars for political favors, and the court described this problem as follows:

> "To the extent that large contributions are given to secure political quid pro quo's from current and potential officeholders, the integrity of our system of representative democracy is

> undermined. . . . Of almost equal concern as the danger of actual quid pro quo arrangements is the impact of the appearance of corruption stemming from public awareness of the opportunities for abuse inherent in a regime of large individual financial contributions . . . [C]ongress could legitimately conclude that the avoidance of the appearance of improper influence 'is also critical . . . if confidence in the system of representative government is not to be eroded to a disastrous extent.'" Id. at 692.

The Buckley court also rejected arguments that the contribution limitations should be struck down because bribery laws would be a less restrictive means of dealing with the problem:

> "Appellants contend that the contribution limitations must be invalidated because bribery laws and narrowly drawn disclosure requirements constitute a less restrictive means of dealing with 'proven and suspected quid pro quo arrangements.' But laws making criminal the giving and taking of bribes deal with only the most blatant and specific attempts of those with money to influence governmental action. And while disclosure requirements serve the many salutary purposes discussed elsewhere in this opinion, Congress was surely entitled to conclude that disclosure was only a partial measure, and that contribution ceilings were a necessary legislative concomitant to deal with the reality or appearance of corruption inherent in a system permitting unlimited financial contributions, even when the identities of the contributors and the amounts of their contributions are fully disclosed." Id. at 693.

In regard to arguments that the contribution limitations discriminated against challengers to incumbents, the court in Buckley stated as follows:

> "Apart from these First Amendment concerns, appellants argue that the contribution limitations work such an invidious discrimination between incumbents and challengers that the statutory provisions must be declared unconstitutional on their face. In considering this contention, it is important at the outset to note that the act applies the same limitations on contributions to all candidates regardless of their present occupations, ideological views, or party affiliations. Absent record evidence of invidious discrimination against challengers as a class, a court should generally be hesitant to invalidate legislation which on its face imposes even handed restrictions." Id. at 694-695. (Emphasis added.)

Applying the analysis of the Buckley case to the question of whether K.S.A. 1990 Supp. 25-4153a infringes upon First Amendment rights, it is apparent that the aforesaid statute is directed at the same problem as the contribution limitations which were upheld in Buckley: the prevention of quid pro quo corruption and the appearance of quid pro quo corruption. Specifically, any contribution made by a lobbyist or political committee during the legislative session is more likely to give the appearance of quid pro quo corruption, i.e. the appearance that the contribution is given to secure a legislator's vote on a particular bill before the legislature. In our judgment, the state's interest in preventing corruption and the appearance of corruption is sufficient to justify the interference with First Amendment rights caused by K.S.A. 1990 Supp. 25-4153a.

Finally, in regard to arguments that the aforesaid statute discriminates against challengers to incumbents, there is no record evidence of invidious discrimination against challengers as a class, and the statute on its face imposes even handed restrictions. Therefore, utilizing the analysis in Buckley (46 L.Ed.2d at 694-695), we cannot conclude that K.S.A. 1990 Supp. 25-4153a violates the principle of equal protection.

In summary, K.S.A. 1990 Supp. 25-4153a prohibits contributions (to legislators, candidates for legislative seats, and their

committees) by registered lobbyists or political committees while the legislature is in session. This prohibition is not a violation of First Amendment rights of free speech and freedom of association.

Very truly yours,

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