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ATTORNEY GENERAL OPINION NO. 92- 42

The Honorable Frank D. Gaines  
State Senator, 16th District  
State Capitol, 140-N  
Topeka, Kansas 66612

Re: Constitution of the State of Kansas --  
Miscellaneous -- Membership or Nonmembership in  
Labor Organizations; Representation Fee

Labor and Industries -- Employer and Employee  
Relations -- Rights of Employees

Synopsis: 1992 Senate Bill No. 174 does not violate the  
provisions of article 15, section 12 of the Kansas  
constitution. Cited herein: K.S.A. 44-803;  
44-809; Kan. Const., art. 15, sec. 12.

\* \* \*

Dear Senator Gaines:

As Senator for the sixteenth district you request our opinion  
as to whether the provisions of 1992 Senate Bill No. 174  
contravene the provisions of article 15, section 12 of the  
Kansas constitution.

Senate Bill 174, as amended by the Senate committee on labor,  
industry and small business, amends K.S.A. 44-803 by adding  
the following language:

"(b) Any labor organization that has been  
certified or formally recognized as the  
exclusive bargaining agent under the  
national labor relations act and that is

required by such federal act to represent all members of the bargaining unit whether members of the labor organization or not shall have the right to bargain for a fair share service fee to be assessed may assess a fair share representation fee to those nonmember employees who by federal mandate the labor organization must represent to the same extent as dues paying members of such labor organization for representation services provided to such nonmember employee pursuant to a specific request made by such nonmember employee to the labor organization for representation of such nonmember employee by the labor organization in any matter relating to an individual grievance concerning such nonmember employee.

"(c) The fair share service representation fee assessable to employees not members of the labor organization shall not exceed the actual cost of representing such nonmember employees in all aspects of such nonmember employees' conditions of employment any matter relating to an individual grievance concerning such nonmember employee as provided in subsection (b). Such service fee shall not include the cost of any additional benefits provided to union members through their dues but shall be no more than the actual cost of representing such nonmember employees to the extent required by the national labor relations act.

"(d) Failure of a nonmember employee to pay such nonmember employee's fair share service representation fee as provided in this section shall give the labor organization the right to bring an action in any court of competent jurisdiction for the payment of such service fee, together with costs and attorney fees. An employee's failure to pay such service fee shall not prejudice the employee's right to continued employment with the employer. It is unlawful for a labor organization or an

employer to discriminate against an employee in any way because of the failure of an employee to pay the fair share representation fee. Payment or nonpayment of the fair share representation fee shall in no way be a condition of employment.

"(e) The labor organization may bargain with the employer, subject to the individual written authorization of a nonmember employee, for a deduction from the nonmember employee's wages the amount of the fair share service representation fee determined as provided in this section. The written authorization of such nonmember employee to have the fair share service representation fee deducted from the employee's salary or wages shall remain effective for not less than 100 days and shall be terminated anytime thereafter upon 30 days' notice to the employer and the labor organization of the employee's desire to terminate the authorization for the fair share service representation fee deduction from the salary.

"(f) A change in the amount of the fair share service fee to be deducted cannot be made more often than twice in any fiscal year.

"(g) A nonmember employee may renew an authorization to deduct the fair share service representation fee after such fee is terminated as above provided upon 10 days' notice to the employer and the labor organization.

"(h) Payment of all moneys deducted from the employer's payroll shall be paid by the employer to the labor organization."

Article 15, section 12 of the Kansas constitution has been interpreted as "prohibiting compulsory membership in a labor organization as a condition of employment or continued employment, includ[ing] by necessary implication a prohibition against forced payment of initiation fees, union dues and assessment, or the equivalent, by a worker to a labor

organization as a condition of employment or continued employment." Higgins v. Cardinal Manufacturing Co., 188 Kan. 11, 23 (1961). (Emphasis added).

Furthermore, K.S.A. 44-803, while allowing employees to join labor organizations, also spells out that such employees "shall also have the right to refrain from any or all such activities" and no person shall be allowed to use means to "coerce or intimidate any employee in the enjoyment of his or her legal rights (K.S.A. 44-809)."

These provisions and the case law interpreting them emphasize that article 15, section 12 of the Kansas constitution and K.S.A. 44-801 et seq. were drafted so as to prohibit "agency shops" and therefore allow employees the right to work without being forced into the membership of the union.

Senate Bill No. 174 states that if a nonmember requests the union to represent the nonmember regarding a grievance then the union may assess a fair share representation fee. The bill goes on to state that "[s]uch service fee shall not include the cost of any additional benefits provided to union members through their dues."

It is our opinion that because the provisions of Senate Bill No. 174 allow unions to assess a representation fee only if the nonmember seeks the union's assistance, this allows the employee the ability to exercise his or her freedom of choice regarding who shall represent him or her in the grievance matter. There does not appear to be any language which coerces or intimidates the employees in this decision making process.

Very truly yours,



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