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ATTORNEY GENERAL OPINION NO. 92- 117

The Honorable Anthony Hensley
State Senator, 19th District
2226 Virginia Avenue
Topeka, Kansas 66605-1357

Re: State Departments; Public Officers and Employees --
Payroll Accounting for State Agencies --
Formulation, Installation and Operation of System
of Payroll Accounting; Payroll Deductions for
Membership Dues

Synopsis: K.S.A. 75-5501 does not authorize members of an
employee organization to designate part of their
payroll deducted monthly dues be contributed by the
state to political action committees. An agreement
between the state and an employee organization to
deduct membership dues from non-members would be
contrary to article 15, section 12 of the Kansas
constitution and K.S.A. 75-5501 unless the employee
has voluntarily signed a written authorization-
assignment. Finally, an "actual direct expense"
for purposes of K.S.A. 75-5501(b)(4) is not limited
to the transaction cost incurred by the state's
computer in taking a specified sum from the check.
Cited herein: K.S.A. 75-4333; 75-4337; 75-5501;
Kan. Const., Art. 15, § 12.

* * *

Dear Senator Hensley:

You have requested our opinion on various questions concerning K.S.A 75-5501.

K.S.A. 75-5501(b) states in relevant part that:

"The director of accounts and reports shall provide, as a part of the system of payroll accounting, a plan for the deduction from the salary or wages of an amount equal to regular membership dues for state officers and employees who are members of the Kansas troopers association or who are in any employee organization which has filed an annual report pursuant to K.S.A. 75-4337 or which has a business agent registered pursuant to K.S.A. 75-4336. Such plan, in addition to such provisions as are negotiated by the director of accounts and reports and the employee organization, shall provided for:" (Emphasis added).

Based on the underscored language of this statute you ask:

"Would K.S.A. 75-5501, as it is now written, permit members of employee organizations to designate that part of their monthly dues be used to fund affiliated chapters within the organization or separate organizations such as political action committees through the dues deduction system the statute now provides and would the denial of that opportunity constitute a violation of First Amendment freedoms?"

K.S.A. 75-5501 refers to regular membership dues. Considering that at one time the provision read "monthly membership dues" (1974 Senate Sub. for HB 2622, as amended by the Senate Committee of the Whole) and using the common meaning of the term membership dues, we believe "regular membership dues" means whatever amount would constitute a standard membership in the employee organization. We understand that certain unions are set up with locals and the standard dues are distributed by the employee organization. However, we do not believe K.S.A. 75-5501 was meant to be extended to allow the officer or employee to require such distribution. If the officer or employee wishes distribution of his dues to a

specific chapter or a separate organization, he may decline payroll deduction and pay his dues accordingly. Furthermore, K.S.A. 75-4333(d) states that "[i]t shall be a prohibited practice for a public employee organization to endorse candidates, spend any of its income, directly or indirectly, for partisan or political purposes or engage in any kind of activity advocating or opposing the election of candidates for any public office." The question posed specifically refers to whether members could designate that part of their monthly dues be used to fund "separate organizations such as political action committees" through the dues deduction system. If the employee and an employee organization independently agree that a portion of the regular membership dues would be distributed by the employee organization to a political action committee, such an agreement would constitute a prohibited practice. Likewise, if at the request of the employee organization the state agreed to directly distribute a portion of employee organization regular membership dues, or an amount in addition to the regular dues, to a political action committee under the auspices of the employee organization membership dues deduction program, it is likely a prohibited practice would have been committed by the employee organization. It might also be possible for another employee organization to charge that the state had committed a prohibited practice under K.S.A. 75-4333(b)(2) by virtue of assisting an employee organization in a prohibited practice which could advantage that employee organization relative to other employee organizations.

You raise the applicability of the United States Supreme Court case, Communications Workers v. Beck, 487 U.S. 735, 101 L.Ed.2d 634, 108 S.Ct. 2641 (1988). You state that based on this case you believe "members who do authorize the distribution of their dues to other sources might likewise be denied their First Amendment rights if such a distribution is denied."

We do not agree with your analysis. Workers v. Beck involved a situation where a group of workers who had not joined the union filed an action seeking an injunction over the agreement between the employer and the union which required all employees in the bargaining unit to pay union dues which were spent for things other than collective bargaining, contract administration, and grievance adjustment activities even if they chose not to join the union. This case deals with mandating the payment of dues by non-members

rather than the situation you raise which involves the refusal to allow employees to contribute to entities or organizations other than recognized public employee organizations through payroll deductions. We cannot deem such a practice to violate any First Amendment rights since the employee can voluntarily make such contributions through avenues other than payroll deduction.

Your second question is:

"Does K.S.A. 75-5501(b) provide authority through payroll deduction for a recognized employee organization to obtain reimbursement from nonmembers represented by that organization in a bargaining unit for collective bargaining services and grievance representation?"

As stated in Attorney General Opinion No. 92-42:

"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."

Furthermore, K.S.A. 75-5501(b) requires that payroll deductions for dues be authorized in writing by the employee. Therefore, an agreement between the state and an employee organization to deduct membership dues from non-members would be contrary to K.S.A. 75-5501 unless the employee has signed a written authorization-assignment.

It should also be noted that Attorney General Opinion No. 78-328 stated:

"[T]he authorized dues deduction plan for members of employee organizations provides for the deduction of dues for all members of such organizations who are state officers and employees, including those members for whom the organization is not the certified or recognized employee organization under K.S.A. 75-4327 and including members for whom another employee organization is the certified or recognized organization thereunder."

Therefore, K.S.A. 75-5501(b) does not infer that employees of a unit represented by a recognized employee organization are automatically in that employee organization.

You also infer that a distinction is made in K.S.A. 75-5501(b) between members of the Kansas troopers association and those who are in other employee organizations. This is not borne out by the legislative history. As originally enacted, K.S.A. 75-5501(b) did not include the reference to the troopers association. When this section was amended in 1981 it was added in order to "allow state troopers to have dues for the Kansas Troopers Association deducted from their paychecks the same as other public employees." (Emphasis added). (See Minutes, Senate Committee on Federal and State Affairs, February 12, 1981, p. 2.) Therefore, in our opinion, there is no basis for inferring an intended distinction between troopers and other state employees.

We note that pursuant to K.S.A. 75-4337, an employee organization with less than 100 members can still be recognized as the representative of a unit. Furthermore, just

because an employee organization has a business agent does not mean the employee organization must be recognized as the representative of the unit.

Finally, you ask whether labor costs constitute an "actual direct expense" for purposes of K.S.A. 75-5501(b)(4).

K.S.A. 75-5501(b)(4) authorizes the director of accounts and reports to provide for:

"payment of all moneys deducted each payroll period pursuant to this section to the employee organization less the amount of actual direct expenses incurred by the state for the membership dues deduction."

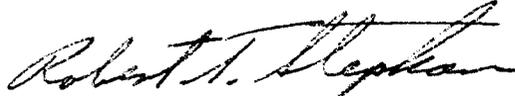
You state that actual, direct expenses should be limited to the transaction cost incurred by the state's computer apparatus in taking a specified sum from the check. You also state that it is your understanding that was the practice of the department of administration until last year when the department began including prorated labor costs.

The department of administration has informed our office that approximately 65-70 hours a month is spent by various staff to operate the dues deduction program. Without the staff's work the dues deduction program would not be feasible or productive. Therefore, it seems unreasonable to allow for computer expenses but not for the necessary manpower expenses. The department of administration does not charge for such things as salaries and wages of any staff who supervise or provide administrative support or space rental charges since these would appear to be "indirect costs." We are told that the transaction fee as originally established included labor costs. However, it has been approximately 10 years since the amount had been adjusted, thus possibly giving the impression that labor was not included in the fee.

In conclusion, K.S.A. 75-5501 does not authorize members of an employee organization to designate part of their payroll deducted monthly dues be dispersed to political action committees. An agreement between the state and an employee organization to deduct a fair share service fee from non-members would be contrary to the Kansas constitution and K.S.A. 75-5501 unless the employee has signed a written authorization-assignment. Finally, an "actual direct expense" for purposes of K.S.A. 75-5501(b)(4) is not limited to the

transaction cost incurred by the state's computer in taking a
specified sum from the check.

Very truly yours,



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