

MINUTES OF THE House COMMITTEE ON Elections

The meeting was called to order by Representative Richard L. Harper at
Chairperson

9:00 a.m./p.m. on March 25, 1983 in room 521-S of the Capitol.

All members were present except: Representative Justice, Excused.

Committee staff present: Myrta Anderson, Legislative Research Department
Arden Ensley, Revisor of Statutes' Office
Eric Rucker, Secretary of States' Office
Dottie Musselman, Committee Secretary

Conferees appearing before the committee:

Representative Littlejohn
Carol Williams, Public Disclosure Commission

Chairperson Harper called the Elections Committee meeting to order.

The first order of business for the Committee was HB 2553, An Act concerning the city of Glade; relating to elections for the approval of the issuance of bonds. Representative Littlejohn was now recognized by Chairperson Harper. The Representative explained his bill giving the background and intent.

Representative Runnels made a motion to amend HB 2553 and pass favorably out of Committee. Seconded by Representative Kline. Motion carried.

SB 339, An Act relating to elections; concerning the filling of certain vacancies in elective offices in cities. Chairperson Harper at this time, recognized Arden Ensley. Mr. Ensley explained the proposed amendment on SB 339 to the Elections Committee. (Attachment 1)

Representative Fox made a motion to amend SB 339 as proposed, and pass out of Committee. Seconded by Representative Crumbaker. Motion carried.

The next order of business on the agenda was SB 376, An Act relating to elections; concerning certain campaign financing and advertising practices; prescribing penalties for the violation thereof.

Chairperson Harper called Carol Williams of the Public Disclosure Commission, to the floor to testify on SB 376. Informational material from the Office of the Attorney General was handed out to the Committee. (Attachment 2)

Representative Blumenthal made a motion to amend a section of SB 376. It was seconded by Representative Helgerson. The motion failed due to a tie.

After much discussion, it was decided that SB 376 should be held in the Committee, and Representative Fox requested that the staff look into this and have more information available for the Committee to work on at the beginning of the Session next year.

Representative Dean moved to table SB 376. There was no second to this. As there was no Committee action on SB 376, the Chairperson stated that SB 376 would be held over until next year.

The minutes of the March 17, 1983, were approved. Representative Moomaw made the motion, and it was seconded by Representative Guldner. Motion carried.

The meeting adjourned at 9:35 a.m.

(Attachment 1)

REPORTS OF STANDING COMMITTEES

MR. SPEAKER:

Your Committee on Elections

Recommends that Senate Bill No. 339

"AN ACT relating to elections; concerning the filling of certain vacancies in elective offices in cities; amending K.S.A. 25-2117 and repealing the existing section."

Be amended:

On page 1, by striking all of line 35 and inserting in lieu thereof the following:

"Sec. 2. K.S.A. 12-1006 is hereby amended to read as follows: 12-1006. The governing board shall consist of the number of commissioners now provided for the several cities by the various commission government acts. No distinction shall be made in title or duties among these commissioners, except as the board shall organize itself for business. Qualifications, terms of office, oaths and bonds of commissioners shall be those provided in the acts herein referred to. Whenever a vacancy in an elective city office occurs for any reason after the closing time for filing to be a candidate specified in K.S.A. 25-2109, and amendments thereto, leaving an unexpired term of more than two years, the unexpired term shall not be filled by election at the next city election but shall be filled by an appointee of the members of the city governing body for the remainder of the unexpired term. All other vacancies shall be filled in the manner already provided for by law.

Sec. 3. K.S.A. 12-1036d is hereby amended to read as follows: 12-1036d. At the first regular city election following the adoption of this act, the councilman elected by the city as a whole, receiving the greatest number of votes shall hold office for a term of four ~~(4)~~ years; the councilman elected by the city as a whole, receiving the second highest number of votes shall

Atch. 1

hold office for a term of two (2) years; the candidate receiving the highest number of votes for district councilman, in each district, shall be elected for a two-year term. The mayor shall hold office for a term of four (4) years. At all subsequent city elections the term for mayor and councilmen-at-large shall be for a period of four (4) years and until a successor has been duly elected and qualified.

The terms of councilmen from districts shall be for a period of two (2) years and until their successors have been duly elected and qualified. When there is a vacancy in the office of mayor, the president of the council upon being qualified shall become mayor until the next regular city election and, as the case may be, until a mayor has been duly elected for the unexpired two-year term and has qualified or until a mayor has been duly elected for a full term and has qualified. ~~---Provided,~~ except that when the president of council becomes mayor there shall be a vacancy in the city council. Whenever a vacancy in an elective city office occurs for any reason after the closing time for filing to be a candidate specified in K.S.A. 25-2109, and amendments thereto, leaving an unexpired term of more than two years, the unexpired term shall not be filled by election at the next city election but shall be filled by an appointee of the members of the city governing body for the remainder of the unexpired term. In all other cases a vacancy in the office of councilman shall be filled by the council, as the case may be, until the next regular city election and a councilman has been duly elected for the unexpired two-year term and has qualified, or until the next regular city election and a councilman has been duly elected for a full term and has qualified.

Sec. 4. K.S.A. 12-10a04 is hereby amended to read as follows: 12-10a04. At the first regular city election following the adoption of the provisions of this act by the electors of the city, the member of the council elected at large receiving the greatest number of votes shall hold office for a term of four (4) years and the other two (2) members of the council elected at

large shall hold office for terms of two ~~(2)~~ years. Of the members of the council elected by districts, those members elected from districts 1 and 3 shall hold office for terms of four ~~(4)~~ years and those members elected from districts 2 and 4 shall hold office for terms of two ~~(2)~~ years. The mayor shall hold office for a term of four ~~(4)~~ years. At all subsequent city elections the term for mayor and members of the council shall be for four ~~(4)~~ years and until their successors have been duly elected and qualified.

Whenever there is a vacancy in the office of mayor, the president of the council, upon being qualified, shall become mayor until the next city general election and a mayor has been duly elected for the unexpired term and has qualified or a mayor has been duly elected for a full term and has qualified, as the case may be. Whenever the president of the council becomes mayor there shall be a vacancy in the council. Whenever a vacancy in an elective city office occurs for any reason after the closing time for filing to be a candidate specified in K.S.A. 25-2109, and amendments thereto, leaving an unexpired term of more than two years, the unexpired term shall not be filled by election at the next city election but shall be filled by an appointee of the members of the city governing body for the remainder of the unexpired term. In all other cases a vacancy in the office of council member shall be filled by the council until the next city general election and a member of the council has been duly elected for the unexpired term and has qualified or a member of the council has been duly elected for a full term and has qualified, as the case may be.

Sec. 5. K.S.A. 13-304 is hereby amended to read as follows: 13-304. At the election held in each odd-numbered year, in all cities of the first class governed by the mayor-council form of government, there shall be elected a mayor from the city at large and two councilmembers from each ward. All officers shall hold their offices for two years and until their successors are elected and qualified.

Except as otherwise hereinafter provided in case of a vacancy occurring by reason of resignation, death, or removal from office or from the ward in which the councilmember had been elected, the mayor, by and with the consent of the remaining councilmembers, may appoint a suitable elector residing in the ward to fill the vacancy until the next election for councilmembers. Whenever a vacancy in an elective city office occurs for any reason after the closing time for filing to be a candidate specified in K.S.A. 25-2109, and amendments thereto, leaving an unexpired term of more than two years, the unexpired term shall not be filled by election at the next city election but shall be filled by an appointee of the members of the city governing body for the remainder of the unexpired term.

Sec. 6. K.S.A. 13-1806 is hereby amended to read as follows: 13-1806. Except as otherwise hereinafter provided in case of any vacancy from any cause in the offices of mayor or any commissioner, the board of commissioners shall, by a majority vote of all the remaining members thereof, elect some eligible person to serve in such capacity until the next city general election. ~~In--any-case-where-on-or-before-the-effective-date-of this-act-a-person-has-been--elected--by--said--board--to--fill--a vacancy,--such--person--shall--serve--until--the--next--city--general election-following-said-effective-date.~~ In case the remaining members of the board of commissioners cannot agree upon some such eligible person, they shall call in the city attorney who shall cast the decisive vote for such appointment. Whenever a vacancy in an elective city office occurs for any reason after the closing time for filing to be a candidate specified in K.S.A. 25-2109, and amendments thereto, leaving an unexpired term of more than two years, the unexpired term shall not be filled by election at the next city election but shall be filled by an appointee of the members of the city governing body for the remainder of the unexpired term. The resignation of the mayor or any commissioner elected under this act shall be made in writing to the board of commissioners for their action thereon. If the

mayor or any commissioner shall remove from the territorial limits of such city, such removal shall ipso facto be deemed to create a vacancy in ~~his--or--her~~ such office. The board of commissioners shall elect by ballot, by a majority vote of all the members thereof, one of their number, whose official title shall be "president of the board of commissioners."

The president of the board of commissioners shall preside at all meetings of ~~said~~ the board, in the absence of the mayor, and shall be invested with all the powers and shall perform all the duties of the mayor of such city during such absence. In the absence of both the mayor and the president of the board of commissioners, the remaining commissioners may select one of their number who shall become "acting president of the board of commissioners." The acting president of the board of commissioners shall have all the powers of the president of the board of commissioners belonging to such office in the absence of the mayor.

Sec. 7. K.S.A. 14-204 is hereby amended to read as follows:
14-204. Each ward of each city governed by this act shall have two councilmembers, who shall be chosen by the qualified electors of their respective wards. No person shall be eligible for the office of councilmember who is not at the time of election an actual resident of the ward from which elected. If any councilmember moves from the ward from which elected, the office shall be deemed vacant. Whenever a vacancy in an elective city office occurs for any reason after the closing time for filing to be a candidate specified in K.S.A. 25-2109, and amendments thereto, leaving an unexpired term of more than two years, the unexpired term shall not be filled by election at the next city election but shall be filled by an appointee of the members of the city governing body for the remainder of the unexpired term. In all other cases whenever a vacancy occurs, the governing body shall appoint an elector of the ward where the vacancy occurs to be councilmember for the balance of the unexpired term.

The council shall elect from its membership a president of

the council. The president of the council shall preside in the absence of the mayor. If a vacancy occurs in the office of the mayor by death, resignation, removal from the city, removal from office, refusal to qualify, or otherwise, the president of the council shall become mayor until the next regular city election and the vacancy created in the office of the councilmember becoming mayor shall be filled by the governing body of the city. Thereupon the council shall elect from its membership a new president of the council.

Sec. 8. K.S.A. 14-308 is hereby amended to read as follows: 14-308. When any vacancy shall happen in the office of mayor by death, resignation, removal from the city, removal from office, refusal to qualify, or otherwise, the president of the council for the time being shall exercise the office of mayor, with all the rights, privileges and jurisdiction of the mayor, until such vacancy be filled or such disability be removed, or, in case of temporary absence, until the mayor shall return; and during the time he or she shall so act, the president shall receive the same compensation that the mayor would be entitled to; and in case of such vacancy, other than a temporary absence or disability, the person exercising the office of mayor shall become mayor. Thereupon the council shall elect from its membership a new president of the council. Whenever a vacancy in an elective city office occurs for any reason after the closing time for filing to be a candidate specified in K.S.A. 25-2109, and amendments thereto, leaving an unexpired term of more than two years, the unexpired term shall not be filled by election at the next city election but shall be filled by an appointee of the members of the city governing body for the remainder of the unexpired term. In all other cases whenever a vacancy shall occur in the office of councilman, the governing body shall appoint an elector of the ward where the vacancy occurs to be councilman for the balance of the unexpired term.

Sec. 9. K.S.A. 14-1305 is hereby amended to read as follows: 14-1305. Except as otherwise hereinafter provided in

case of any vacancy from any cause in the office of mayor or any commissioner, the remaining members of the said board of commissioners shall within ~~ten-(10)~~ 10 days after the occurrence of said the vacancy elect some suitable person to fill said the vacancy until the next city election, at which time a successor shall be elected to fill the unexpired term, provided there is any portion of said such term unexpired, and in case such remaining members cannot agree upon some such suitable person, then they shall call in the ~~then~~ city attorney who shall cast the decisive vote for such appointment. Whenever a vacancy in an elective city office occurs for any reason after the closing time for filing to be a candidate specified in K.S.A. 25-2109, and amendments thereto, leaving an unexpired term of more than two years, the unexpired term shall not be filled by election at the next city election but shall be filled by an appointee of the members of the city governing body for the remainder of the unexpired term. The resignation of the mayor or any commissioner elected under this act shall be made in writing for their action thereon. If the mayor or any commissioner shall remove from the territorial limits of said the city, such removal shall ipso facto be deemed to create a vacancy in ~~his-or-her~~ such office.

Sec. 10. K.S.A. 15-201 is hereby amended to read as follows: 15-201. Every two years an election shall be held for a mayor, and five councilmembers. The mayor and councilmembers shall hold their offices for two years and until their successors are elected and qualified.

Except as otherwise hereinafter provided in case of a vacancy in the council occurring by reason of resignation, death, or removal from office or from the city, the mayor, by and with the advice and consent of the remaining councilmembers, shall appoint an elector to fill the vacancy until the next election for that office. Whenever a vacancy in an elective city office occurs for any reason after the closing time for filing to be a candidate specified in K.S.A. 25-2109, and amendments thereto, leaving an unexpired term of more than two years, the unexpired

term shall not be filled by election at the next city election but shall be filled by an appointee of the members of the city governing body for the remainder of the unexpired term. In case any person elected as a councilmember neglects or refuses to qualify within 30 days after election, the councilmember shall be deemed to have refused to accept the office and a vacancy shall exist. The mayor may, with the consent of the remaining councilmembers, appoint a suitable elector to fill the vacancy.

In case of a vacancy in the office of mayor, the president of the council shall become mayor until the next regular election for that office and a vacancy shall occur in the office of the councilmember becoming mayor.

Sec. 11. K.S.A. 15-1405 is hereby amended to read as follows: 15-1405. Except as otherwise hereinafter provided in case of any vacancy from any cause in the office of mayor or any commissioner, the remaining members of said board of commissioners shall, within ~~ten~~ 10 days after the happening of such vacancy, elect some suitable person to fill the unexpired term until the next city election, and in case such remaining members cannot agree upon some such suitable person, then they shall call in the then city attorney, who shall cast the decisive vote for such appointment. Whenever a vacancy in an elective city office occurs for any reason after the closing time for filing to be a candidate specified in K.S.A. 25-2109, and amendments thereto, leaving an unexpired term of more than two years, the unexpired term shall not be filled by election at the next city election but shall be filled by an appointee of the members of the city governing body for the remainder of the unexpired term.

The resignation of the mayor or any commissioner elected under this act shall be made in writing to the board of commissioners for their action thereon. If the mayor or any commissioner shall remove from the territorial limits of such city, such removal shall, ipso facto, be deemed to create a vacancy in ~~his-or-her~~ such office.";



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

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DISCLOSURE
COMMISSION

ROBERT T. STEPHAN
ATTORNEY GENERAL

December 30, 1982

MAIN PHONE (913) 296-2215
CONSUMER PROTECTION 296-3751

ATTORNEY GENERAL OPINION NO. 82- 280

Jerry L. Harper
Douglas County District Attorney
Judicial and Law Enforcement Center
Lawrence, Kansas 66044

Re: Elections -- Corrupt Practices -- Corporate
Contributions

Synopsis: K.S.A. 25-1709 (as amended by L. 1982, ch. 156, §1) is not unconstitutional as violative of the "free speech" clause of First Amendment to the U.S. Constitution. Moreover, a recall election is a question submitted election to which 25-1709 no longer applies. Finally, savings and loan associations are subject to the provisions of K.S.A. 25-1709, as amended, since for purposes of that section, they are "carrying on the business of a bank." Cited herein: K.S.A. 1981 Supp. 9-701, K.S.A. 9-702, 9-1101, 17-5101, 17-5501, 25-1709 (as amended by L. 1982, ch. 156, §1), 25-1710, 25-2503, 25-4301, 25-4314, 25-4318, 77-201, U.S. Const., Amend. I.

* * *

Dear Mr. Harper:

You request the opinion of this office regarding the constitutionality and application of K.S.A. 25-1709, an act which prohibits certain political contributions by corporations engaged in certain regulated industries. We will respond to each of your inquiries in the order in which they were presented.

First, you ask:

"In light of the U.S. Supreme Court decisions in 1st National Bank of Boston v. Bellotti, 435 U.S. 765 (1978) and Buckley vs. Valeo,

Attch. 2

424 U.S. 1 (1976), is the absolute prohibition of K.S.A. 25-1709 on corporate contribution for the purpose of aiding, promoting or preventing the nomination or election of any person to public office constitutionally permissible?"

We begin our discussion with a brief history of K.S.A. 25-1709. Originally enacted in 1911 [L. 1911, ch. 137, §3], this statute reads:

"No corporation carrying on the business of a bank, trust, surety, indemnity, safe deposit, insurance, railroad, street railway, telegraph, telephone, gas, electric light, heat, power, or water company, or any company having the right to take or condemn land or to exercise franchises in public ways granted by the state or by any county or city, and no trustee or trustees owning or holding the majority of the stock of such corporation, shall pay or contribute in order to aid, promote, or prevent the nomination or election of any person to public office, or in order to aid, promote or antagonize the interests of any political party [or to influence or affect the vote on any question submitted to the voters]. No person shall solicit or receive such payment or contribution from such corporation or such holders of stock."

The bracketed language was deleted by the 1982 Kansas Legislature [L. 1982, ch. 156, §1]; however, the invalidity of this portion of the statute was determined in 1978. Attorney General Schneider, relying upon First National Bank of Boston v. Bellotti, 435 U.S. 765, 98 S.Ct. 1407, 55 L.Ed.2d 707 (1978), concluded the prohibition against corporate contributions on question submitted elections was unconstitutional and therefore unenforceable. Kan. Att'y Gen. Op. No. 78-214. The Attorney General noted that the remaining prohibitions of 25-1709 were not called into question by the Bellotti decision and are enforceable. Id. at 3. You now express concern that the remaining restrictions of the Kansas statute may be unconstitutional in view of Buckley v. Valeo, 424 U.S. 1, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976). In that case, the U.S. Supreme Court, in a plurality decision, struck down portions of the Federal Election Campaign Act which limited independent expenditures of moneys by individuals and groups on behalf of political candidates for federal office. While upholding portions of the Act, including some limitations on

political contributions, the Court based its decision regarding independent expenditures upon the "free speech" clause of the First Amendment to the U.S. Constitution.

For a number of reasons we do not believe Buckley requires us to declare 25-1709 unconstitutional. Statutes are presumed to be constitutional [State ex rel., Stephan v. Martin, 230 Kan. 747, Syl. ¶2 (1982)], and if there is a way to construe a statute as constitutional, that should be done. Board of Greenwood County Comm'rs v. Nodel, 228 Kan. 469, Syl. ¶1 (1980). Noting that 25-1709 forbids certain corporations to "pay or contribute in order to aid, promote, or prevent the nomination or election of any person to public office," such language may be construed as restricting contributions to others, particularly the political candidate or his or her election committee. It does not have to be interpreted as restricting expenditures for purposes of making direct speech for or against a political candidate. In other words, restrictions on expenditures for direct speech are a different matter than restrictions involving "speech by someone other than the contributor." Buckley at 21.

In addition, Bellotti (decided after Buckley) specifically recognized that a state prohibition restricted to certain regulated corporations and applying to elections for public office was not necessarily unconstitutional. The Bellotti court stated in pertinent part:

" . . . §8 also proscribes corporate contributions or expenditures 'for the purpose of aiding, promoting, or preventing the nomination or election of any person to public office, or aiding, promoting or antagonizing the interests of any political party.' [See for comparison K.S.A. 25-1709 as amended by Ch. 156, 1982 Session Laws.] In this respect, the statute is not unlike many other state and federal laws regulating corporate participation in partisan candidate elections. Appellants do not challenge the constitutionality of laws prohibiting or limiting corporate contributions to political candidates or committees, or other means of influencing candidate election. [Citations omitted.] About half of these laws . . . do not apply to referendum votes. . . .

"The overriding concern behind the enactment of [such] statutes . . . was the problem of corruption of elected representatives through the creation of political debts. [Citations

omitted.] The importance of the governmental interest in preventing this occurrence has never been doubted. [O]ur consideration of a corporation's right to speak on issues of general public interest implies no comparable right in the quite different context of participation in a political campaign for election to public office." Bellotti at 787, fn. 26.
(Emphasis added.)

Other courts have recognized the distinction between referendum votes and elections. See, Let's Help Florida v. McCrary, 621 F.2d 195, 200 (5th Cir. 1980); C & C Plywood Corp. v. Hanson, 583 F.2d 421, 424-25 (9th Cir. 1978).

It is to be remembered that Buckley concerned a federal statute placing a blanket limitation on personal and corporate contributions, both direct and indirect. That case, in our opinion, cannot stand for the proposition that a state may not restrict speech of certain corporations or restrict expenditures for other than direct speech. Either may be permissible.

Therefore, in our opinion, K.S.A. 25-1709 (as amended) is not unconstitutional.

You inquire next:

"Does an election to recall a Lawrence city commissioner come within the ambit of the conduct intended to be prohibited by the phrase 'nomination or election of any person to public office' or with the ambit of the phrase 'any question submitted to the voters' for purposes of K.S.A. 25-1709?"

Recall elections for local officers in this state are governed by the terms of K.S.A. 25-4301 et seq., specifically K.S.A. 25-4318. We note that K.S.A. 25-4314 provides that "[e]xcept as otherwise specifically provided by this act, laws applicable to question submitted elections shall apply to elections held under this section." We note also that the recall ballot itself indicates that a question is being submitted to the voters. See K.S.A. 25-4314. Consistent with this, K.S.A. 25-2503, in defining "question submitted elections," clearly distinguishes "city election."

Therefore, we are of the opinion that a recall election is a "question submitted election" as that term is defined by K.S.A. 25-2503. Such election is not held for the "nomination or election of any person to public office" as that phrase is used in K.S.A. 25-1709. Since K.S.A. 25-1709 was determined

to be unconstitutional as applied to question submitted elections and has since been amended so as not to apply to such elections, contributions by corporations covered by 25-1709 are not prohibited in such elections.

Finally, you inquire whether a savings and loan institution is a "corporation carrying on the business of a bank" for purposes of K.S.A. 25-1709.

In Kansas, state banks are incorporated under K.S.A. 1981 Supp. 9-701 et seq., and savings and loan associations are governed by K.S.A. 17-5101 et seq. We note, however, that the language of K.S.A. 25-1709 is not limited to "banks" as defined in K.S.A. 1981 Supp. 9-701; rather, the Act applies to any corporation "carrying on the business of a bank." According to K.S.A. 77-201 Second:

"Words and phrases shall be construed according to the context and the approved usage of the language; but technical words and phrases, and such others as may have acquired a peculiar and appropriate meaning in law, shall be construed according to such peculiar and appropriate meaning."

In Kansas Attorney General Opinion No. 81-177 this office considered, at length, the business of banking. In that opinion, we concluded that a wholesale company accepting deposits from its employees was engaged in the business of banking for purposes of the banking code. And in State of Kansas v. Hayes, 62 F.2d 597 (1932), the Tenth Circuit Court of Appeals held that a trust company having certain powers of a bank, especially the holding of public funds, was not subject to the bankruptcy laws since banks were excepted from the Bankruptcy Act. In that opinion, the Court said, quoting Sterling v. Tantum, 5 Boyce (28 Del.) 409, 94 A. 176, 182:

"As a general proposition it is unquestionably true that the investing of a corporation with banking powers makes it a bank, no matter by what name it is called. Calling an institution a bank does not make it a bank in legal contemplation if it is not given the powers of a bank. And conversely, calling an institution a trust company does not prevent its being a bank within the meaning of the law, if it possesses and exercises all the powers of a bank."

Similarly, a savings and loan association which received deposits of money from the general public, permitted withdrawals

Jerry L. Harper
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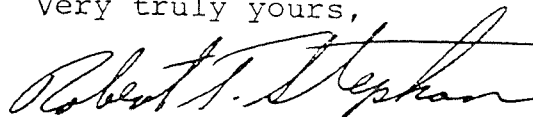
and paid interest on deposits was a bank within state statute governing banks. First Federal Sav. & L. Ass'n of Puerto Rico v. Zequeira, 305 F.Supp. 37 (1969).

Although regulated by different state boards, banks and savings and loans associations are engaged in regulated industries which may conduct business in this state only with state authorization. Likewise, state banking corporations and savings and loan corporations have many similar, if not identical, powers. For example, both receive deposits or investments of money from the general public and pay interest or dividends thereon. See K.S.A. 9-1101(l) and 17-5501(g). Both have authority to make loans for a variety of purposes. K.S.A. 9-1101(4) and K.S.A. 17-5501(h), (i), (l) and (w).

We note further that "banking" is defined in K.S.A. 9-702 which excludes, specifically, building and savings and loan associations along with national banks, credit unions and certain other regulated financial institutions. But for this specific exclusion from the state banking code, savings and loan associations would most likely be "amenable" to the provisions of the banking code. Hence, we believe that for purposes of K.S.A. 25-1709, state licensed savings and loan associations are "carrying on the business of a bank." In so doing we are not unmindful of the penalty provisions of K.S.A. 25-1710. However, we do not believe strict construction of 25-1709 is in order. Generally, statutes for the public's benefit are liberally construed even when they contain penal provisions. See State ex rel., Murray v. Palmgren, 231 Kan. 524, 530, 531 (1982).

Therefore, it is our opinion that K.S.A. 25-1709 (as amended by L. 1982, ch. 156, §1) is not unconstitutional as violative of the "free speech" clause of the First Amendment to the U.S. Constitution. Moreover, a recall election is a question submitted election to which this statute no longer applies. Finally, savings and loan associations are subject to the provisions of K.S.A. 25-1709, as amended, since for purposes of that section, they are "carrying on the business of a bank."

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Bradley J. Smoot
Deputy Attorney General

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