

State of Kansas

Attorney General

Opinion 2008-13

Public Health—Regulation of Dentists and Dental Hygienists—Persons Deemed to Be Practicing Dentistry; Non-licensed Persons Directly Applying Teeth Whitening or Bleaching Product. Senator Susan Wagle, 30th District, Wichita, June 3, 2008.

Application of teeth whitening or bleaching products *could* be included in the statutory phrases "dental service of any kind," and treatment of a "physical condition of the human teeth" as used in the definition of the practice of dentistry, and "removal of . . . stains" as used in the definition of the practice of dental hygiene. The Kansas Dental Board has authority to adopt a regulation stating that teeth whitening is a "dental service" to treat a "physical condition of the human teeth" and/or a dental hygiene service to remove stains. However, in the absence of such regulatory specificity, an attempt to initiate either a criminal prosecution or an injunction for unlawful practice may be subject to a due process challenge for vagueness. Cited herein: K.S.A. 65-1421; 65-1422; 65-1423; 65-1451; K.S.A. 2007 Supp. 65-1456; K.S.A. 74-1407. CN

Opinion 2008-14

Crimes and Punishments—Sentencing; Multiple Sentences; Crimes Committed While Imprisoned; Term of Post Incarceration Supervision; Ex Post Facto. Roger Werholtz, Secretary, Kansas Department of Corrections, June 16, 2008.

2008 House Bill 2707, which changes the length of post incarceration supervision for inmates who have committed a crime after July 1, 1993 while imprisoned for a crime committed prior to July 1, 1993, does not violate the Ex Post Facto Clause because the bill does not impose additional punishment to that which was prescribed for the pre-1993 crime. Cited herein: K.S.A. 21-4608, as amended by 2008 H.B. 2707, § 3; K.S.A. 21-4704; K.S.A. 22-3718; 22-3722; U.S. Const., Art. 1, §§ 9, 10. MF

Opinion 2008-15

Cities and Municipalities—Planning and Zoning—Planning, Zoning and Subdivision Regulations in Cities and Counties; Planning Commission; Oath of Office for Commission Members.

State Departments; Public Officers and Employees—Oath Required for Public Officers; Members of a Joint City and County Planning Commission. William W. Jeter, Ellis County Counselor, Hays, June 26, 2008.

Members of city and county planning commissions and boards of zoning appeals are officers for purposes of the oath requirement of K.S.A. 75-4308. Cited herein: K.S.A. 12-744; 12-759; 21-3110; 54-106; 75-4308; 75-4313 and 75-4314. MJS

Opinion 2008-16

Criminal Procedure—Offender Registration—Time Period in Which Required to Register; Termination of Registration Requirement; Relief from Registration Requirement for Persons Adjudicated as Juvenile Offend-

ers for Certain Sexually Violent Crimes. Robert E. Blecha, Director, Kansas Bureau of Investigation, Topeka, June 26, 2008.

Notwithstanding K.S.A. 22-4908, a district court may relieve a person from the duty to register under the Kansas Offender Registration Act if the duty to register was based upon the person's adjudication as a juvenile offender for an act which if committed by an adult would constitute the commission of a sexually violent crime and such crime was not an off-grid felony or a felony ranked in severity level 1 of the nondrug sentencing grid. Cited herein: K.S.A. 22-4902; 22-4903; 22-4906; 22-4908; K.S.A. 2007 Supp. 59-29a02. RER

Opinion 2008-17

State Boards, Commissions and Authorities—State Lottery—Kansas Lottery Act; Lottery Gaming Facilities; Gaming Facility Management Contract Requirements; Minimum Investment in Infrastructure. Stephen L. Martino, Executive Director, Kansas Racing and Gaming Commission, Topeka, June 30, 2008.

The Kansas Expanded Lottery Act (KELA) does not prohibit phasing-in the minimum amount of investment in infrastructure for a proposed lottery gaming enterprise over a period of time. Rather, the KELA requires only that the Lottery Commission *determine* that the proposed development consists of a minimum investment in infrastructure in the statutory amount prescribed for each gaming zone. Cited herein: K.S.A. 2007 Supp. 74-8702; 74-8734; 74-8736. MF

Opinion 2008-18

State Boards, Commission and Authorities—State Lottery—Kansas Lottery Act; Kansas Expanded Lottery Act; Restrictions on State and Local Officials; Penalties; Use of Official Authority to Influence the Decision of the Lottery Gaming Facility Review Board. John A. Potucek II, Sumner County Counselor, Wellington, June 30, 2008.

The provision in the Kansas Expanded Lottery Act prohibiting a local official from using his or her official authority to influence or attempt to influence the decision of the Lottery Gaming Facility Review Board (Review Board) should be interpreted to apply to members of a governing body of a city or county where a gaming facility *may be* located. To the extent that the conclusion in Attorney General Opinion No. 2007-33 differs, it is hereby withdrawn.

Whether a local official uses his or her official authority to influence or attempt to influence the decision of the Review Board will be a question of fact. However, while a local official may testify concerning the process the governing body used in endorsing applicants and the substance of the endorsement decisions, he or she cannot express a personal opinion regarding the merits of the contracts under consideration by the Review Board, including which proposed contract should be selected for the gaming zone at issue.

Finally, there may be criminal culpability for an *individual* county commissioner and his or her agent if the

(continued)

75-4306 STATE DEPARTMENTS; PUBLIC OFFICERS AND EMPLOYEES

Limitations on sheriff who operates a private security and investigations agency. 92-16.

County attorney with part-time private practice may accept part-time position with corporation contracting with county if proper disclosure statement is filed. 92-27.

City commissioner, in such commissioner's private capacity, may sign petition to create a benefit district for downtown improvements; other factors considered. 93-17.

City mayor may accept free airline ticket from "sister city" in Republic of China for visit to that city. 93-27.

Limitations and restrictions on city council member's participation in contracts between city and council member's business interests. 93-44.

Limitations and restrictions on city council member's participation in litigation involving real estate sold by such council member to city. 94-4.

Permissible extent of city council member's participation in city's development of project that such council member's spouse may possibly receive construction contract. 94-14.

Watershed districts; contracting officers; duties; qualifications; restrictions; definitions; watershed district is not a state agency but is a governmental subdivision. 94-29.

Local governmental agency may contract with private enterprise in which local official has substantial interest if such official abstains from any official action on such contract. 94-31.

Local real estate agency president also serves on city/county joint planning commission and board of zoning appeals; possible conflicts of interest problems discussed. 94-38.

City planning commission; rezoning residential development; commission member who is member of real estate agency which will sell lots in development. 95-10.

Attorney General's Opinions:

Public officers and employees; conflict of interests; reporting substantial interests. 81-170.

Public officers and employees; conflict of interests. 83-98.

CASE ANNOTATIONS

Annotation to L. 1967, ch. 464, § 5:

1. Section held unconstitutional as a violation of equal protection of the law and because of vagueness. *State v. Bogert*, District Court of Shawnee County, Kansas, No. 27,121, filed Jan. 29, 1970.

75-4306. Penalties for violations; severability. (a) Violation of K.S.A. 75-4304 or 75-4305, and amendments thereto, or failure to make any disclosure of substantial interests required by K.S.A. 75-4302a is a class B misdemeanor.

(b) If any clause, paragraph, subsection or section of this act is held invalid or unconstitutional it shall be conclusively presumed that the legislature would have enacted the remainder of this act without the invalid or unconstitutional clause, paragraph, subsection or section.

History: L. 1970, ch. 366, § 6; L. 1990, ch. 303, § 19; May 31.

Source or prior law:

L. 1967, ch. 464, § 7.

Revisor's Note:

Former 75-4306 repealed, L. 1970, ch. 366, § 22. Reference to 75-4302a was incorrectly cited as section 16 in act.

Attorney General's Opinions:

Eligibility to office in cities of third class; conflict of interest. 81-88.

Public officers and employees; conflict of interests. 83-98. Conflict of interest; marital relationship. 86-89.

75-4307.

History: L. 1967, ch. 464, § 7; Repealed, L. 1970, ch. 366, § 7; April 1.

OATH OF OFFICE

75-4308. Oath required for public officers and employees. Before entering upon the duties of his or her office or employment, each person to be employed by the state or any agency thereof or by any county, city or other municipality of the state including any school, college or university supported in whole or in part by public funds collected under any tax law of the state or any municipality thereof shall be required to subscribe in writing to the oath set out in K.S.A. 54-106.

History: L. 1968, ch. 106, § 1; July 1.

Source or prior law:

21-305.

Research and Practice Aids:

Officers and Public Employees ← 36(1).

C.J.S. Officers and Public Employees § 46.

Law Review and Bar Journal References:

New loyalty oath falls short of certain guidelines, Lawrence A. Dimmitt, 7 W.L.J. 361, 373 (1968).

Note on perjury in Kansas, 13 W.L.J. 479, 484 (1974).

Attorney General's Opinions:

Public officers', employees' oaths of office; definition of employee. 80-107.

Term of person appointed to fill vacancy in office of county treasurer. 81-128.

75-4309. Same; falsifying oaths or affirmations. All oaths or affirmations submitted hereunder shall subject the person who shall falsify them to the pains and penalties of perjury.

History: L. 1968, ch. 106, § 2; July 1.

Law Review and Bar Journal References:

Note on perjury in Kansas, 13 W.L.J. 479, 484 (1974).

75-4310. Oath required for public officers and employees; administering; filing. Oaths required hereunder shall be administered before the officers and in the manner prescribed by K.S.A. 54-101, 54-102 and 54-103. All oaths administered under the provisions of this act shall be filed in writing with the governing body of the

county, city or any body's duly authorized public schools with such school district any agency thereof the employing state schools receiving K.S.A. 75-4308, such office of the chief of school, college or university. **History:** L. 19294, § 1; April 14.

Research and Practice Aids: Officers and Public Employees C.J.S. Officers and Public

75-4311. Sanction for officer discharging pay other discharging off municipality or of a any private school, public funds shall be in payment for services subject to the provision oath has been duly officer or employee. **History: L. 19294, § 2; April 14.**

75-4312. Sanction for officer discharging pay other discharging off municipality or of a any private school, public funds shall be in payment for services subject to the provision oath has been duly officer or employee. **History: L. 19294, § 2; April 14.**

75-4313. Sanction for officer discharging pay other discharging off municipality or of a any private school, public funds shall be in payment for services subject to the provision oath has been duly officer or employee. **History: L. 19294, § 2; April 14.**

