

STATE OF KANSAS



OFFICE OF THE GOVERNOR

State Capitol
Topeka

ROBERT F. BENNETT
Governor

BENNETT EXECUTIVE ORDER NO. 75-3

Executive Department
State of Kansas
Topeka, Kansas

WHEREAS, the Attorney General of the State of Kansas has issued an opinion numbered 75-151, dated April 4, 1975, directed to the Governor of the State of Kansas, interpreting K.S.A. 22-3707 and other laws of the State of Kansas to be unconstitutional regarding the power of the legislature, and particularly the Senate, to reserve unto themselves the power to confirm or reject statutorily provided executive appointments;

WHEREAS, the Attorney General's powers are limited to those provided by statute, and those arising from the common law as limited by statutory restrictions, and said powers do not include, and the attorney is precluded from, advising and attempting to compel a state agency to abrogate an existing law on the mere opinion of the Attorney General as to its constitutionality;

WHEREAS, the Attorney General is empowered to test the constitutionality of a law by instituting appropriate action before a court of competent jurisdiction, but has of this date failed to do so and has advised the Kansas Adult Authority that they must seat and recognize one Franklin Theis as a member of the Kansas Adult Authority whose appointment was rejected by the Senate on March 26, 1975, and that the Kansas Adult Authority must not recognize and seat one Carolee Leek whose appointment was confirmed by the Senate on April 9, 1975, thereby causing confusion and consternation among the members of the Kansas Adult Authority, and further causing the Kansas Adult Authority, by resolution to recognize neither Carolee Leek or Franklin Theis;

WHEREAS, said Attorney General's opinion and actions thereunder have caused confusion as to authority of boards, committees, agencies and authority members appointed by the Governor in substitution of those appointees who were rejected by the Senate, and such confusion necessitates the expedient and definitive resolution of the constitutional question before a court of appropriate jurisdiction;

WHEREAS, said Carolee Leek has instituted a court action to protect and insure her office to which she was lawfully appointed, and her cause of action is an appropriate case to obtain a final determination of said constitutional question which affects appointees similarly situated;

WHEREAS, Carolee Leek is unable to engage the Attorney General to represent her in such cause of action, as would be the usual and normal procedure, because of the Attorney General's announced adverse interest to her position;

WHEREAS, the Attorney General has proven himself interested adversely to the State and its agencies and branches of government by recommending and attempting to compel state agencies, commissions, and authorities to abrogate state law based upon his individual opinion of the unconstitutionality of that law, without the same having been adjudicated by a court of appropriate jurisdiction;

WHEREAS, it is unfair, inequitable and inappropriate for said Carolee Leek to assume the full costs and financial burden of retaining counsel to represent her in this matter when the Attorney General has effectively placed himself beyond her request for representation by his own acts and announced position and it is within the power of the Governor, under and by virtue of the Constitution of the State of Kansas as the supreme executive officer charged with the enforcement of the laws of the State of Kansas, and within the scope of K.S.A. 75-108, to employ counsel to act for the State of Kansas by representing said Carolee Leek in such action;

NOW, THEREFORE, IT IS HEREBY DIRECTED AND ORDERED that Charles N. Henson, be employed as counsel for Carolee Leek in an appropriate action before a court of appropriate jurisdiction to protect her appointment as a member of the Kansas Adult Authority, if such counsel be willing, and to pay for such counsel's services out of the Governor's budget as it may provide therefor.

This document shall be filed with the Secretary of State as Executive Order No. 75-3.

THE GOVERNOR'S OFFICE

By the Governor

April 11, 1975

