

STATE OF KANSAS



OFFICE OF THE GOVERNOR

State Capitol
Topeka

ROBERT F. BENNETT
Governor

BENNETT EXECUTIVE ORDER NO. 75-4

DIRECTING CERTAIN STATE AGENCIES
TO ACT REGARDING APPOINTMENTS

Executive Department
State of Kansas
Topeka, Kansas

WHEREAS, I have been furnished with a copy of the Attorney General's opinion dated April 4, 1975 wherein he has generally advised that various agencies, boards, commissions, and authorities should ignore specific statutes of the State of Kansas providing for the appointment of members to agencies, boards, commissions and authorities subject to confirmation by the State Senate. As I read the Attorney General's opinion he has stated that these laws requiring confirmation are violative of the constitution of the State of Kansas and that the appointments, once made by the Governor, are in effect regardless of subsequent non-confirmation by the Senate;

WHEREAS, in my opinion, a directive by the Attorney General to a state agency, board, commission or authority to not comply with statutory provisions which the Attorney General

believes to be unconstitutional, in effect, attempts to suspend the law involved in violation of the doctrine of separation of powers which is firmly entrenched by case law of this state. Only the judicial branch of government has the power to declare a law unconstitutional. The Attorney General, believing a statute to be unconstitutional, has the right and duty to initiate action in the courts of this state to obtain a determination of that issue, or to suggest statutory revisions to the legislature. (See Hetherington v. McHale, 311 A. 2d 162, 10 Pa.C. 501, decided in 1973.);

WHEREAS, it is an ancient presumption of law that legislative enactments are constitutional and that this presumption can only be overcome by a showing that the statute clearly, palpably and plainly violates constitutional provisions. Every presumption must be indulged in favor of the constitutionality of a statute and the agencies and officers of this state are required as a part of the orderly process for the conducting of state business, to comply with the law as it exists until a court of competent jurisdiction finds that law unconstitutional. Of course, a court, once the issue of constitutionality is properly before it, may enjoin the operation of the law by interlocutory order prior to final determination; and

WHEREAS, the Attorney General may issue official opinions as to constitutionality of a given law but he may not direct the avoidance of a law until he has, or in the event of his

failure to do so, until an affected board, officer or citizen, files an appropriate action to determine the constitutionality and the court has made its decision. "While an opinion of an Attorney General may be persuasive, it is neither conclusive nor binding, and the recipient of it is free to follow it or not as he chooses. The opinions of the Attorney General have in no sense the effect of judicial utterances." (Greenwood v. Estes, Savings & Loan Commissioner, 210 Kan. 655.)

NOW, THEREFORE, as the chief executive officer of this state, entrusted with the responsibility of the enforcement of the laws of this state (Article 1, Section 3, Constitution of the State of Kansas), I direct that all appointments made by the Governor of this state and rejected by the Senate on March 26, 1975, having been terminated as required by law, are not to be recognized from and after the date of such non-confirmation, and the appointee shall not be seated nor entitled to any of the emoluments of office from and after the date of such non-confirmation. I further direct that those appointees, appointed by me to fill the vacancies created by non-confirmation should be recognized and seated for the positions for which they were appointed and they should have all the emoluments of such office until they are rejected by the Senate, if in fact that rejection should occur. The agencies affected and appointments to fill the vacancies are as follows:

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Kansas Adult Authority

Carolee Leek

Commission on Civil Rights

Constance M. Achterberg
Tony Mesa

State Civil Service Commission

Beverly A. Rogers

Kansas Economic Development Commission

Velma Jean Gragg
James H. Browne

Forestry, Fish and Game Commission

Lewis B. Moon

Grain Advisory Commission

Francis B. Gwin

State Board of Healing Arts

Mary Joan Marshall, D.C.

Advisory Committee on Mexican American Affairs

Magdalen Vargas
Maria Estrada
Gloria Torres de Corona

Public Employees Relations Board

Phyllis Burgess

State Salvage Board

Arthur B. Selectman
Vacancy not filled

State Water Resources Board

Dale Williams


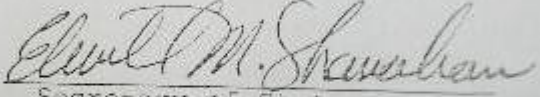
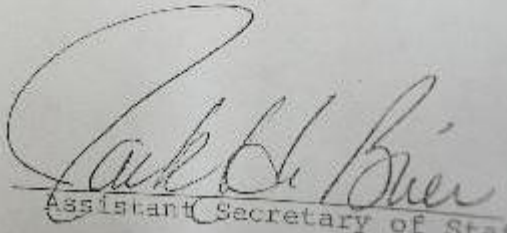
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This document shall be filed with the Secretary of State as
Executive Order No. 75-4.

THE GOVERNOR'S OFFICE

By the Governor

April 15, 1975



Secretary of State

Assistant Secretary of State