

2018 Kansas Statutes

75-764. Notice and opportunity to appear and be heard before statute or constitutional provision determined to be invalid.

(a) It is hereby declared to be the public policy of the state of Kansas that the attorney general, as the state's chief legal officer, should have notice and the opportunity to appear and be fully heard before any statute or constitutional provision of this state is determined by the judicial branch to be invalid as violating the constitution of the state of Kansas, the United States constitution or any other provision of federal law. This section shall be liberally construed to effectuate that public policy.

(b) Before declaring or determining any statute or constitutional provision of this state invalid as violating the constitution of the state of Kansas, the United States constitution or any other provision of federal law, or enjoining any statute or constitutional provision for such invalidity, or entering any judgment or order that determines or declares such invalidity, a district court or any judge of the district court, whether acting in judicial or administrative capacity, shall require:

(1) In any criminal case, that the state of Kansas has been given notice of the disputed validity and provided an opportunity to appear and be heard on the question of the validity of the statute or constitutional provision. Such notice shall be served by the party disputing validity on the prosecuting attorney representing the state in such criminal case. If the prosecuting attorney fails to respond to such notice, the court shall notify the attorney general of such failure to respond and shall provide the attorney general the opportunity to appear and be heard on the question of the validity of the statute or constitutional provision; and

(2) in any civil case, and in all other matters, that notice of the disputed validity has been served on the attorney general by the party disputing validity, or by the court, and the attorney general has been given an opportunity to appear and be heard on the question of the validity of the statute or constitutional provision.

(c) In any matter before the supreme court or the court of appeals, or any justice or judge thereof:

(1) A party that files a pleading, brief, written motion or other filing or paper that contests or calls into doubt the validity of any statute or constitutional provision of this state shall serve such filing or paper on the attorney general, accompanied by a conspicuous notice that the attorney general is being served pursuant to this section; and

(2) the court shall ensure that the attorney general has been provided notice and an opportunity to appear before determining any statute or constitutional provision of this state to be invalid as violating the constitution of the state of Kansas, the United States constitution or any other provision of federal law.

(d) If any court, or justice or judge thereof, enters any judgment or order, or makes any determination or declaration, in violation of this section, the attorney general may, within a reasonable time of learning of such violation, apply to the court to set aside or rescind such judgment, order, determination or declaration. Such application shall be considered timely if made within 30 days from the date the court, or justice or judge thereof, files such judgment, order, determination or declaration, or within 15 days after the attorney general has learned of such violation, whichever is later. Upon application of the attorney general under this subsection, the court shall enter such orders as are necessary to allow the attorney general to appear and be heard and shall set aside or rescind such judgment, order, determination or declaration upon a showing it was entered in violation of this section.

(e) Whenever notice is required to be served on or provided to the attorney general by this section, the attorney general shall be allowed at least 21 days from the date of such notice to appear or intervene, and if the attorney general does appear or intervene, the attorney general shall be given such reasonable additional time to be fully heard as the court may order.

(f) Nothing in this section shall be construed to require the attorney general to appear or intervene in any action.

(g) This section shall not apply in any action or proceeding in which the attorney general is the party disputing or defending the validity of the statute or constitutional provision.

History: L. 2016, ch. 8, § 1; July 1.