



STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

CURT T. SCHNEIDER
Attorney General

February 3, 1975

Opinion No. 75- 37

Dr. Herman D. Lujan, Director
Division of State Planning
and Research
Department of Administration
Topeka, Kansas 66612

Dear Dr. Lujan:

You inquire concerning §§ 15 and 16, ch. 350, L. 1974, amending K.S.A. 74-6102 and -6103, respectively.

Under K.S.A. 1973 Supp. 71-6101, also amended by § 14, ch. 350, L. 1974, there is created an advisory council on ecology. Insofar as pertinent here, the composition of the council was changed by the 1974 amendment to include the director of the Division of State Planning and Research as a member thereof, this division being created by that act within the Department of Administration.

K.S.A. 1974 Supp. 74-6102 now states in pertinent part as follows:

"The council shall appoint an executive secretary and state ecologist, an ecologist meeting its standards of education and experience. The executive secretary shall be within the classified service of the Kansas civil service act and shall receive an annual salary fixed by the council on ecology and approved by the state finance council."

The relationship of the Division of State Planning and Research and the Advisory Council on Ecology is established by K.S.A. 1974 Supp. 74-6103 thus:

"The advisory council on ecology is hereby attached to and made a part of the division of state planning and research. The division

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of state planning and research shall serve as secretariat for the council and shall provide such clerical and other staff assistance as may be necessary to assist the council in the performance of their duties. Expenses of the council in carrying out the provisions of this act shall be paid from appropriations therefor upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the director of state planning and research."

You question whether, as director of the Division of State Planning and Research, or the Advisory Council on Ecology, you have the responsibility and authority to establish probationary periods, complete rating forms, effect pay changes and make other judgments or recommendations regarding the status, continuation or termination of employment of the staff of the Council, these being one clerk III and its executive secretary.

The question of the locus of such authority respecting the Advisory Council on Ecology was presented to this office earlier, under K.S.A. 74-6103 prior to its 1974 amendment. At that time, it provided in pertinent part thus:

"The comprehensive health planning program of the state board of health shall serve as secretariat for the council and shall provide such clerical and other staff assistance as may be necessary to assist the council in the performance of their duties. The director of health is hereby authorized to provide for the payment of expenses incurred by the council in carrying out the provisions of this act, and the director of accounts and reports is hereby authorized to draw warrants upon the state treasury. . . upon presentation of duly itemized vouchers approved by the director of health."

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Questions were raised whether the Council had the right to specify the job description and salary of its staff ecologist, or whether it was required to utilize the position of health planning analyst as the staff person directed by the Comprehensive Health Planning Office. Other questions concerned the respective control to be exercised by the Council, as opposed to that exercised by the Comprehensive Health Planning Program, over the budget submitted for the Council. Attorney General Vern Miller stated thus:

"[T]he Comprehensive Health Planning Program of the State Board of Health is directed by law to serve as the 'secretariat' of the Council, which we take to mean that the Program is the provider of secretarial, clerical and other assistance as is necessary to enable the Council to perform its duties. Thus, the Program remains in substantial legal control over the administrative and supportive services upon which the Council must depend to perform its functions. Obviously, the Council and the Program may disagree over what is 'necessary' to enable the Council to perform its duties. However, to the extent that the Program is the body or agency legally empowered to provide those services, its decisions on such matters is substantially determinative of the content of budget requests submitted in behalf of the Council, and of the job descriptions and salaries of personnel supplied for the Council."

Under the amendment, the Division of State Planning and Research succeeds the Comprehensive Health Planning Program as the 'secretariat' of the Council.

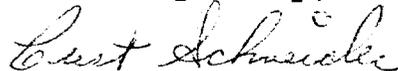
Under the 1974 amendments, the foregoing opinion does not hold true in its entirety. As pointed out above, K.S.A. 1974 Supp. 74-6102 has been amended to empower the Council to appoint an executive secretary and state ecologist, to fix the education and experience qualifications for the state ecologist, and to fix the annual

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salary of the executive secretary, subject to the approval of the state finance council. Thus, the advisory council itself becomes the appointing authority for its executive secretary and state ecologist, and is empowered, in our opinion, to establish probationary periods, complete rating forms, effect pay changes, and make other judgments or recommendations regarding the status, continuation and termination of said executive secretary and state ecologist. The clerk III position which you mention falls within the "clerical and other staff assistance" which must be provided by the Division as secretariat of the Council, and as to that position, the Division, or rather, yourself as director thereof, constitutes the appointive authority for that position.

If further questions arise concerning this matter, please do not hesitate to call upon us.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj

cc: Mr. Keith Weltmer
Secretary of Administration
2nd Floor - State Capitol
Topeka, Kansas 66612

Mr. Dale Saffels, Chairman
Advisory Council on Ecology
Kansas Corporation Commission
4th Floor - State Office Building
Topeka, Kansas 66612

Mr. Herb King, Transaction Officer
Division of Personnel
801 Harrison
Topeka, Kansas 66612