



STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

March 19, 1975

Opinion No. 75-125

Mr. Bryce B. Moore
Workmen's Compensation Director
535 Kansas Avenue - 6th Floor
Topeka, Kansas 66603

Dear Mr. Moore:

You have inquired as to whether federally appointed county agents of the Kansas Cooperative Extension Service are exempt from coverage under the Kansas Workmen's Compensation Act (K.S.A. 44-501 et seq.) by virtue of the fact that these same individuals are fully covered under the provisions of the Federal Employees' Compensation Act. Your correspondence indicates that each piece of federal legislation listed below considers these individuals as federal employees for purposes of that particular act. These federal statutes include the following:

- (1) Federal Civil Service Retirement
- (2) Federal Life Insurance Programs
- (3) Federal Health Insurance Programs
- (4) Federal Penalty Mail Privilege
- (5) Full coverage under the Federal Employees' Compensation Act
- (6) Federal Tort Claims Act

The Kansas Workmen's Compensation Act, at K.S.A. 44-505, authorizes that:

"each county, city, school district, sewer district, drainage district, and other public or quasi-public corporation of the state of Kansas, and those employers whose work, trade or business is not such as described and included in this section of this act, and employers commencing or renewing in this state and work, trade or business, may accept thereunder, and any such county, city, school district, sewer district, drainage district, or other public or quasi-public

Mr. Moore
Page Two
March 19, 1975

corporation of the state of Kansas in making such election shall have power to designate the employees of which of its departments are to accept the provisions of the act . . ."

Conspicuously absent from those governmental bodies authorized to elect for coverage is the federal government. Therefore, resolution of the above inquiry requires a determination of whether county extension agents are to be deemed employees of the federal or the county government. In this regard, Mr. Griffith's letter indicates that approximately two-thirds (2/3) of an agent's salary is derived from county funds while the remainder comes from federal funds appropriated to the state for the Extension Service Program.

Although more frequently utilized in differentiating the independent contractor situation, the standard case law test of the employer-employee relationship is "not the exercise of direction, supervision or control over a workman . . . but the right to exercise such direction, supervision or control." Watson v. Dickey Clay Mfg. Co., 202 Kan. 336, 450 P.2d 10 (1969).

As applied to county extension agents, a brief examination of the Smith-Lever Act of 1914 which created the Extension Service Program, and the administrative rules and regulations promulgated pursuant thereto, is necessary to determine where this right of control exists. This federal legislation appropriated specified amounts to land-grant colleges to continue or inaugurate agricultural extension programs. 7 U.S.C.A. § 341. Most of the language of the Act concerns the initial establishment of extension programs within the various states and how and under what conditions the funds are to be distributed through the state to the college. It is important to note, for purposes here, that the Smith-Lever Act is made expressly subject to the rules and regulations promulgated by the Secretary of Agriculture as determined to be necessary to carry out its provisions. 7 U.S.C.A. § 348.

In reference to the employment of county agents, the Secretary of Agriculture has delegated his authority to the Administrator of the extension service. 7 C.F.R. 2:19; 7 C.F.R. 2:59(a)(1). The administrator is vested with the power to appoint the Director of the State Extension Service, who in conjunction with the State Executive Board, is charged with the duty to propose appointments for the county agent positions. K.S.A. 2-615. These appointments are subject to the administrator's approval. Unless specifically reserved or otherwise delegated, the delegations of authority to each general officer of the Department and each agency head includes:

"the authority to direct and supervise the employees engaged in the conduct of activities under his jurisdiction, and the authority to take any action, execute any document,

Mr. Moore
Page Three
March 19, 1975

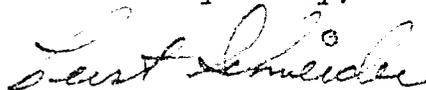
authorize any expenditure, promulgate any rule, regulation, order, or instruction required by or authorized by law and deemed by the general officer or agency head to be necessary and proper to the discharge of his responsibilities. This authority will be exercised subject to applicable administrative rules and regulations. Unless subject to his continuing responsibility for the proper discharge or delegations made to him, delegate and provide for the re-delegation of his authority to appropriate officers and employees. Subject to the general supervision of the Secretary, agency heads delegated authority from a general officer report to and are under the supervision of the general officer."

This power includes the employment of necessary personnel. Furthermore, no delegation of authority by the Secretary or a general officer shall preclude the Secretary or general officer from exercising any of the authority so delegated. 7 C.F.R. 2:11. The point to describing the chain of command within the Department of Agriculture is to show that although the director is given the power to supervise the operation of the extension service at the local level, the right to exercise supervision and control is retained by the federal government through the delegations of power by the Secretary of the Department of Agriculture.

The basic nature of the program further supports this conclusion. As it is set up, the federal government has established the Extension Service Program to provide useful and practical information on subjects relating to agriculture and to encourage the application of the same. 7 U.S.C.A. § 341. Towards this end, the director is given authority to enter into agreements with county governments establishing extension bureaus within that county. In exchange for receipt of the benefits derived for this service, the county government agrees to supply a portion of the agent's salary. In other words, the federal government supplies the county with the Extension Service Program and the personnel to administer it, while the county furnishes a portion of the consideration to the local agent. The important feature is that the federal government retains the right to exercise supervision and control at all levels. The county is given no power in this respect.

Therefore, for reasons discussed above, it is the opinion of this office that the county extension agents are to be considered as employees of the federal government and are thereby not subject to the Kansas Workmen's Compensation Act under the county election provisions of K.S.A. 44-505.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

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