



STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

July 22, 1975

ATTORNEY GENERAL OPINION NO. 75- 298

Mr. Robert R. Raines
Secretary of Corrections
5th Floor, KPL Tower Building
Topeka, Kansas 66612

Re: State Departments; Public Officers and Employees--
Department of Corrections-- Power of Secretary to
Regulate Sanitation and Safety Within Jails and
Correctional Institutions

Synopsis: The Secretary of Corrections possesses the necessary
enforcement authority to prevent any person from
being incarcerated in an unsanitary or unsafe de-
tention facility, including the power to close
particular facilities and to transfer the inmates
housed therein to other places of confinement.

Dear Mr. Raines:

K.S.A. 1974 Supp. 75-5228 authorizes the Secretary of Corrections
to promulgate standards concerning the safety and sanitation of
correctional institutions and jail facilities and to conduct in-
spections to ascertain compliance therewith. You inquire whether
this statute confers upon the Secretary the necessary power to
enforce these regulations through corrective action should he
discover the existence of violations within a particular facility.

K.S.A. 1974 Supp. 75-5228 provides:

"No person shall be incarcerated in any
correctional institution or jail or any
part thereof that has been deemed unsani-
tary, unsafe or a detriment to human life
by the secretary of corrections. The
secretary is hereby authorized to promulgate
standards relating to the sanitation and

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safety of such institutions and jails. In promulgating such standards and in inspecting such institutions and jails, the secretary shall request assistance from the state board of health and the state fire marshal."

After an analysis of the question, we believe that such authority is clearly conferred by the statute. The initial language of the statute speaks in unmistakably clear and direct terms. Although the decision whether the conditions within a particular facility are "unsanitary, unsafe or a detriment to human life" is a question entrusted to the discretion of the Secretary, the result which follows such a determination by him is mandatory, i.e., no person shall continue to be incarcerated therein. Under such circumstances, the statute imposes an imperative duty upon the Secretary to protect the inmates incarcerated therein and grants him the authority to order the cessation of confinement of all prisoners at that facility if necessary until he is satisfied that appropriate remedial action has been effectuated.

Such an order is not, by the terms of the statute, self-enforcing. Compliance by the sheriff or other officer in charge of such a correctional institution or jail entails transfer of persons incarcerated therein to one which meets the standards of the Secretary of Corrections, and the making of arrangements to transport others who are taken into custody to approved jails. Failure to comply with an order of closure issued by the Secretary of Corrections, by continuing to confine persons in any correctional institution or jail which has been deemed unsanitary, unsafe or detrimental to human life, despite the plain prohibition of the statute, may result in judicial proceedings to enforce the removal of incarcerated persons, ouster proceedings for wilful neglect to perform a duty enjoined by law, and may raise questions of possible liability in actions charging denial of civil rights arising from such confinement.

Therefore, it is our opinion that K.S.A. 1974 Supp. 75-5228 confers upon the Secretary all necessary enforcement authority to insure attainment of the benign objectives of the legislature in enacting the statute.

Very truly yours,



CURT T. SCHNEIDER
Attorney General