



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

March 18, 1976

ATTORNEY GENERAL OPINION NO. 76-96

Mr. Jerry Powell
Executive Director
Public Employee Relations Board
701 Jackson
Topeka, Kansas 66603

RE: Public Employer-Employees Relations Act -- Prohibited Practices

Synopsis: An election by public employers other than the state and its agencies bringing the employer under the act is required before the provisions of K.S.A. Supp. 75-4333 apply.

* * * *

Dear Mr. Powell:

K.S.A. Supp. 75-4321 (5) (b) provides:

"Subject to the provisions of subsection (c), it is the purpose of this act to obligate public agencies, public employees and their representatives to enter into discussions with affirmative willingness to resolve grievances and disputes relating to conditions of employment, acting within the framework of law. It is also the purpose of this act to promote the improvement of employer-employee relations within the various public agencies of the state and its political subdivisions by providing a uniform basis for recognizing the right of public employees to join organizations of their own choice, or to refrain from joining, and be represented by such organizations in their employment relations and dealings with public agencies."

(Emphasis supplied)

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K.S.A. Supp. 75-4321(5) (c) provides:

"The governing body of any public employer, other than the state and its agencies, by a majority vote of all the members may elect to bring such public employer under the provisions of this act, and upon such election the public employer and its employees shall be bound by its provisions from the date of such election. Once an election has been made to bring the public employer under the provisions of this act it continues in effect unless rescinded by a majority vote of all members of the governing body. No vote to rescind shall take effect until the termination of the next complete budget year following such vote." (Emphasis supplied)

K.S.A. Supp. 75-4333 defines certain prohibited acts evidencing bad faith on the part of public employers and employees. K.S.A. Supp. 75-4334 provides the procedure to be followed by parties in submitting prohibited practice disputes to the Board for administrative adjudication.

You inquire whether public employers other than the state which affirmatively elect not to come under the Act or public employers which take no action are nonetheless subject to Board Orders issued pursuant to K.S.A. Supp. 75-4334(b). Similarly, are employees of such employers subject to Board jurisdiction arising out of these disputes?

In Wichita Public Schools Employees Union v. Smith, 194 K. 2, 397 P.2d 357 the Kansas Supreme Court had before it the question of the applicability of the state's employer and employee relations statute, (G.S. 1961 Supp. 44-801 et seq.) to political subdivisions of the State, specifically the Board of Education of the City of Wichita. In holding that the Act does not apply to sovereign entities the following rules are stated at page 5.

"The general rule recognized in this jurisdiction, that statutes limiting rights or interests will not be interpreted to include the sovereign power unless it be expressly named or intended by necessary implication (State v. Book Co., 69 Kan. 1, 24, 76 Pac. 411; State v. Kaemerling, 83 Kan. 387, 111 Pac. 441), applies to

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statutes limiting the power to control compensation, terms and conditions of employment.

The entire matter of qualifications, tenure, compensation and working conditions for any public employee involves the exercise of governmental powers which are exercised by or through legislative fiat. Under our form of government public office or public employment cannot become a matter of collective bargaining and contract.

The objects of a political subdivision are governmental -- not commercial. It is created for public purposes and has none of the peculiar characteristics of enterprises maintained for private gain. It has no authority to enter into negotiations with labor unions concerning wages and make such negotiations the basis for final appropriations. Strikes against a political subdivision to enforce collective bargaining would in effect amount to strikes against the government.

The statutes pertaining to employer and employee relations must be construed to apply only to private industry, at least until such time as the legislature shows a definite intent to include political subdivisions. We find nothing to indicate that the legislature intended to embrace political subdivisions in the term "employer" as used in G. S. 1961 Supp. 44-802(4) and thus make political subdivisions and governmental agencies subject to the labor laws of the state including collective bargaining."

In light of the foregoing, we are constrained to the view that the provisions of the Act are not to be expanded beyond its clearly expressed terms. Thus, as to local units of government, K.S.A. Supp. 75-4321(5)(b) and (c) set out above, clearly condition jurisdiction of the Board and indeed the applicability of the Act itself to the employer-employee relations of public agencies after the election to come under the law is unequivocally made by the governing body.

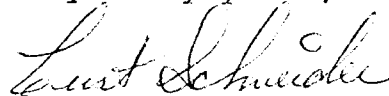
Some confusion has developed concerning the provisions of K.S.A. 75-4335 as it relates to your question.

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"This act shall be inapplicable to any public employer, other than the state and its agencies which, acting through its governing body has adopted by ordinance or resolution its own provisions and procedures which have been submitted to the board by such public employer and as to which there is in effect a determination by the board that such provisions and procedures and the continuing implementation thereof are reasonably equivalent to the provisions and procedures set forth in this act with respect to the state."

This section, in our opinion, should not be read as implying the law's application to public employers or employees other than the state without the election discussed above. The section merely allows for local legislation and substitution of provisions by local governing bodies after the election to come under the Act has been made.

Very truly yours,



CURT T. SCHNEIDER
Attorney General

CTS/DRH/cgm