

STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

March 23, 1978

ATTORNEY GENERAL OPINION NO. 78- 123

Mr. J. Byron Meeks
Edwards County Attorney
Edwards County Courthouse
Kinsley, Kansas 67547

Re: Labor and Industries--Minimum Wage and Maximum Hours--
-Definition of "Employer" under K.S.A. 1977 Supp. 44-
1202(d)

Synopsis: Counties are subject to the provisions of the minimum
wage and maximum hour law, K.S.A. 1977 Supp. 44-1201
et seq.

* * *

Dear Mr. Meeks:

You have inquired concerning application of the new minimum wage and maximum hours law, K.S.A. 1977 Supp. 44-1201 et seq. to counties. Specifically, you ask whether counties are required to comply with the overtime provisions of the law by virtue of their being "employers" as defined by the act.

K.S.A. 1977 Supp. 44-1202(d) provides the following definition of employer:

"'Employer' means any individual, partnership, association, corporation, business trust or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee, but shall not include any employer who is subject to the

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provisions of the fair labor standards act of 1938 (29 U.S.C.A. § 201 et seq.) and any other acts amendantory thereof or supplemental thereto." [Emphasis supplied.]

Standing on its own, this definition does not demonstrate a conclusive legislative intent. However, when looking at other sections of the act, it is observed that the act in some manner affects the following groups of people:

- 1) Employees engaged in fire protection or law enforcement activities. K.S.A. 1977 Supp. 44-1204(b).
- 2) Persons sentenced to the custody of the secretary of corrections and any person serving a sentence in a county jail. K.S.A. 1977 Supp. 44-1204(c)(3).
- 3) The employment of handicapped workers or patient laborers at state institutions. K.S.A. 1977 Supp. 44-1207(b)(1).

The above categories involve those who labor at the municipal, county and state level. Therefore, regardless of the failure to so specify in the definitional section, the act apparently intended to include municipalities, counties and the state.

K.S.A. 77-201 provides the following:

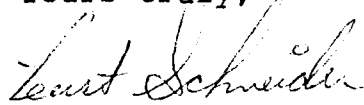
"In the construction of the statutes of this state the following rules shall be observed, unless such construction would be inconsistent with the manifest intent of the legislature or repugnant to the context of the statute: . . . Thirteenth. The word 'person' may be extended to bodies politic and corporate."

The annotations to this provision indicate that counties, cities, and even the United States have been construed on various occasions to come within the meaning of the word "person." Looking at the minimum wage and maximum hours law in its entirety, it is apparent that indeed there was a legislative intent to include bodies politic in the act, and the term "person" should be construed accordingly, to include political subdivisions as employers.

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Finally, you inquire as to the impact of a recent Supreme Court decision in which the federal minimum wage law was declared unconstitutional in its application to state governmental subdivisions. In National League of Cities v. Usery, 426 U.S. 833, the Supreme Court ruled that the Congress had exceeded the authority granted under the Commerce Clause when it tried to regulate minimum wages and maximum hours of employees of states and their political subdivisions. Such matters, the Court declared, are within the sovereign power of the states to govern. The Kansas state legislature, in enacting the minimum wage and maximum hours law, has exercised its dominion over an area reserved for it by the Usery decision.

Yours truly,



CURT T. SCHNEIDER
Attorney General

CTS:DBM:JRM:kj