



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

CURT T. SCHNEIDER  
ATTORNEY GENERAL

November 6, 1978

MAIN PHONE: (913) 296-2215  
CONSUMER PROTECTION: 296-3751

ATTORNEY GENERAL OPINION NO. 78- 358

Mr. James A. McCain  
Secretary of Human Resources  
Department of Human Resources  
401 Topeka Avenue  
Topeka, Kansas 66603

Re: Labor and Industry--Industrial Safety--Rules and Regulations

Synopsis: Under K.S.A. 1977 Supp. 44-636, as amended by ch. 191, § 1, L. 1978, the Secretary of Human Resources has the necessarily implied authority to adopt rules and regulations for the promulgation of standards and for any other purposes deemed necessary for implementation and enforcement of the act.

\* \* \*

Dear Secretary McCain:

You inquire concerning your authority to promulgate rules and regulations for the implementation of K.S.A. 1977 Supp. 44-636, as substantially amended by the 1978 legislature. See ch. 191, § 1, L. 1978.

This section authorizes your department to have access to places of employment where labor is performed, for the purpose of gathering facts and statistics contemplated by the act, and in order "to examine into the methods of protection from danger to employees and the sanitary conditions in and around such buildings and places . . . ." If it is found upon investigation that certain unsafe or dangerous conditions exist, you are required to notify the owner, proprietor, agent, administrator or lessee, and may order

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"the provisions of such safeguards or safety devices or the making of such alterations or additions or changes in methods of operation or the taking of any other measures the secretary may deem appropriate and necessary for the safety and protection of the employees or other persons endangered by such conditions . . . ."

The second paragraph enumerates specific findings which, if made, require notice to be given: 1) "that the heating, lighting, ventilation, occupant capacity or sanitary arrangement of any such establishment or place is such as to be injurious to the health of the persons employed or residing therein;" 2) "that the means of egress in case of fire or other disaster are not sufficient;" 3) "that the belting, shafting, gearing, elevators, drums, saws, cogs or machinery . . . are so located or are in a condition as to be dangerous, or are not sufficiently guarded;" 4) "that the vats, pans or any other structures filled with molten metal, hot liquid or hazardous materials or substances are not surrounded with proper safeguards for preventing accidents, injury or illness to those persons in, or near them;" 5) "that the construction or condition of any building or buildings, or any boiler, machinery or other appurtenances in or about any place . . . is such as to be dangerous or injurious . . ." 6) or "that the methods of operation are such as to be unnecessarily dangerous or injurious to the persons employed or residing therein" or 7) "that any other condition which is within the control of the owner, proprietor, agent, administrator or lessee . . . be found to be dangerous or injurious to any persons."

The rather substantial amendments to this section elaborate upon your authority to issue orders requiring the correction of hazardous conditions and the furnishing of necessary safeguards, and the procedure therefor. However, as you point out, the section is silent regarding the promulgation of rules and regulations to implement the act. It is settled, however, that express authority is not necessary to authorize such administrative rules and regulations. At 1 Am.Jur.2d, *Administrative Law* § 97, the writer states thus:

"The power of administrative agencies to make rules and regulations does not depend for its existence solely upon express grant. The authority of an administrative agency

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to adopt reasonable rules and regulations, which are deemed necessary to the due and efficient exercise of the powers expressly granted, cannot be questioned. This authority is implied from the power granted." [Footnotes omitted.]

As Secretary of the Department of Human Resources, you are authorized and empowered to identify and determine a broad variety of conditions which are dangerous or injurious to the health and safety of workers and others. Given the broad jurisdiction of the Department over workplaces throughout the state, the authority to identify and determine those conditions by standards, adopted in the form of rules and regulations, is necessarily implicit in the express authority which is granted under the act. You advise that at present, inspections relative to safety and health are referenced to nationally recognized standards, and are so noted on all reports to employers. Clearly, the use of standards is an absolute necessity for any remotely effective implementation of the authority given the Department under this act. It would be extraordinary, indeed, if the express authority granted did not include the implied authority to adopt such rules and regulations which are necessary to promulgate standards by which employers may be guided in operating and equipping workplaces under your jurisdiction. In my judgment, clearly, you have the necessarily implied authority to adopt appropriate administrative rules and regulations which are necessary for the implementation of responsibilities of the Department under this act.

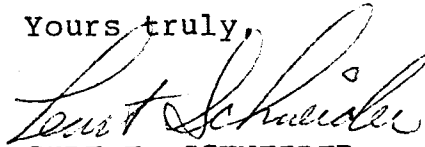
You advise that due to the broad scope of coverage in the field of industrial and occupational safety and health, numerous volumes of standards are followed by the Department, which undergo constant revision. Those used routinely, you indicate, include federal OSHA general industry standards, 29 C.F.R. § 1910, OSHA construction standards, and standards of the National Fire Protection Association, the American National Standards Institute, and the National Electrical Code. You are free to adopt such of these standards by reference which fall within your jurisdiction under this section. However, you may not adopt them by reference in such a manner as to include future amendments and revisions, those not in force at the time of adoption. Such prospective adoption would constitute a delegation of authority which is forbidden under decisions of the Kansas Supreme Court.

In sum, it is my opinion that you are authorized to adopt rules and regulations providing standards in the various fields of

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occupational and industrial health and safety which come under your jurisdiction pursuant to this section. There is no requirement that you adopt such standards, but if you wish to do so, it is certainly within your authority.

Yours truly,



CURT T. SCHNEIDER  
Attorney General

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