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May 29, 1979

ATTORNEY GENERAL OPINION NO. 79- 97

Mr. Bernis G. Terry
Assistant County Counselor
Johnson County Courthouse
Olathe, Kansas 66061

Re: Labor and Industries--Minimum Wage and Maximum
Hours--Definition of "Employer" under K.S.A. 1978
Supp. 44-1202(d)

Synopsis: Counties are subject to the provisions of The
Minimum Wage and Maximum Hours Law (K.S.A. 1978
Supp. 44-1201 et seq.).

* * *

Dear Mr. Terry:

You have requested our opinion regarding the applicability of K.S.A. 1978 Supp. 44-1201 et seq. (cited as The Minimum Wage and Maximum Hours Law) to county government. This identical question was answered in the affirmative by Attorney General Opinion No. 78-123. We concur with the determination made by that opinion, and we are enclosing a copy thereof for your consideration. However, without unduly burdening this opinion by the unnecessary repetition of the enclosed prior opinion, we want to point out the rationale employed therein.

The writer of the prior opinion conceded that the definition of "employer" in K.S.A. 1978 Supp. 44-1202(d) does not specifically include counties. However, he demonstrated by the following language that the substance of the Act itself manifests an

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apparent legislative intent that counties be included within the purview of the Act:

"Standing on its own, this definition ["employer"] 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 [is] apparently intended to include municipalities, counties and the state."

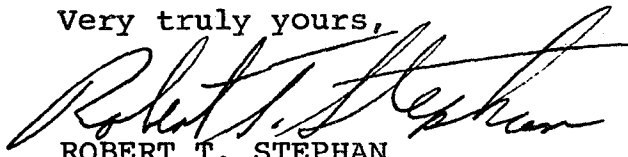
The prior opinion went on to note that such interpretation did not do any violence to the definition of "employer" in 44-1202(d), since it is appropriate to construe the word "person" used in this definition as including bodies politic and corporate. Such construction is specifically permitted by the Thirteenth clause of K.S.A. 77-201, as well as a number of Kansas cases construing such statutory provision. Although not cited by the prior opinion, it also is to be noted that by virtue of K.S.A. 19-101, "each organized county within this state . . . [is] a body corporate and politic."

While we are appreciative of your submission of the County Counselor's brief in support of a contrary response to your inquiry, we respectfully suggest that the brief does not address the question from the standpoint it is considered here or in prior Opinion No. 78-123. Rather, said brief concludes that a county is not an employer under The Minimum Wage and Maximum

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Hours Law because a county is not a corporation. Assuming arguendo the validity of this contention, such legal distinction does not refute the apparent legislative intent that counties be considered as employers under this Act, nor does it address the legitimacy (within the context of this legislative intent) of construing "person" to include governmental entities such as counties. For these reasons, we do not find the brief instructive and must reaffirm the determination made in Opinion No. 78-123.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



W. Robert Alderson
First Deputy Attorney General

RTS:WRA:jm
Enclosure