



STATE OF KANSAS

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October 17, 1980

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ATTORNEY GENERAL OPINION NO. 80-232

Mr. Losson G. Pike
Clark County Attorney
Ashland, Kansas 67831

Re: Townships and Township Officers--Hospitals--Removal
of Directors

Synopsis: Directors of a township hospital district may not be removed from office except by provision of law. Such directors are not subject to election recall, but they may be removed from office under the provisions of K.S.A. 60-1205 et seq., the ouster statutes. Cited herein: K.S.A. 1979 Supp. 25-4301, 25-4304, K.S.A. 37-101, 60-1205, 77-201, Second, 80-2113, 80-2115.

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Dear Mr. Pike:

As county attorney for Clark County you have requested our opinion in regard to the procedures available for removing a director of a township district hospital from office. You state that the board of directors of a district hospital of a city of the third class in Clark County organized under the provisions of K.S.A. 80-2113 et seq. has raised the question regarding the removal of board members.

The general rule for removal of elected officials is stated in 67 C.J.S., Officers §117:

"While any person accepting office does so subject to conditions placed in the law creating the position, including any provision relative to removal, removal is a drastic remedy, and the incumbent of an office should not be deprived of it except in accordance with the law of the land." (Footnotes omitted.)

Mr. Losson G. Pike
Page Two
October 17, 1980

It appears that there are three such legal procedures for removing elected officials in Kansas: election recall, impeachment, and ouster. Election recall is provided for in K.S.A. 1979 Supp. 25-4301 et seq. K.S.A. 1979 Supp. 25-4301 states:

"All elected public officials in the state, except judicial officers, are subject to recall by the voters of the state or the political subdivision from which elected."

The very broad scope of this act is narrowed by K.S.A. 1979 Supp. 25-4304(c) which defines elected public officials for the purposes of the act:

"(c) K.S.A. 1976 Supp. 25-4318 to 25-4331, inclusive, apply only to recall of all elected public officials who are provided by law to be elected at an election conducted by one or more county election officers, except those officers specified in subsections (a) and (b). For the purpose of this act, officers to which this subsection apply are 'local officers.'" (Emphasis added.)

The provisions of K.S.A. 80-2113 et seq. make no mention of county election officers, nor is there any mention of a procedure for removal of officers. The board of directors for the district hospital are elected under K.S.A. 80-2115 at a meeting of the qualified electors of the district. The governing body of the city establishing the hospital district is required to cause a notice of the meeting to be advertised, and the meeting is called to order by the mayor or city clerk. Each year thereafter the annual meeting is called and conducted by the incumbent board of directors. K.S.A. 80-2118, 80-2119. In short, the provisions of the statutes pertaining to the election of hospital district directors do not entrust the conduct of the election to the county election officer. Because the election of directors is not conducted by the election officer, the directors are not subject to recall under K.S.A. 1979 Supp. 25-4301 et seq. The directors are not "local officers" within the meaning of K.S.A. 1979 Supp. 25-4304(c).

A second method of removal of public officers is impeachment. The procedure for impeachment is found in K.S.A. 37-101 et seq. Article 3, §28 of the Kansas Constitution states the grounds for impeachment:

"The governor and all other officers under this constitution, shall be removed from office on impeachment for, and conviction of treason, bribery, or other high crimes and misdemeanors." (Emphasis added.)

Mr. Losson G. Pike
Page Three
October 17, 1980

It is not necessary to determine whether directors of hospital districts are "officers under this constitution" because this term has been judicially interpreted to refer only to state constitutional officers. See, State, ex rel., v. Bain, 189 Kan. 575 (1962), and State ex rel., v. Martin, 87 Kan. 817 (1912). Impeachment, then, is not an applicable procedure for removal of the officers in question.

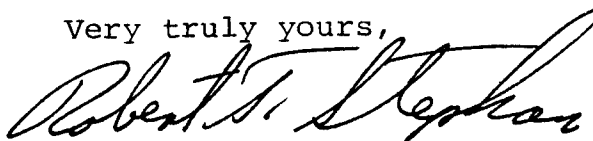
The third procedure for removal of public officers available in Kansas is a quo warranto proceeding under the ouster statute, K.S.A. 60-1205, which states:

"Every person holding any office of trust or profit, under and by virtue of any of the laws of the state of Kansas, either state, district, county, township or city office, except those subject to removal from office only by impeachment, who shall (1) willfully misconduct himself or herself in office, (2) willfully neglect to perform any duty enjoined upon him or her by law, or (3) who shall commit any act constituting a violation of any penal statute involving moral turpitude, shall forfeit his or her office and shall be ousted from such office in the manner hereinafter provided."
(Emphasis added.)

K.S.A. 77-201, Second, dictates that "[w]ords and phrases shall be construed according to the context and approved usage of the language" Guided by this rule of construction, we conclude that the word "district," as used in the ouster statute, must be understood to include districts of the type in question here. Accordingly, officers of such districts are subject to removal from office pursuant to that section.

In summary, we conclude that an ouster proceeding is the only available mechanism under Kansas law for the removal of directors of a township district hospital organized pursuant to K.S.A. 80-2113 et seq.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Steven Carr
Assistant Attorney General

RTS:BJS:SC:jm