



STATE OF KANSAS

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December 7, 1981

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ATTORNEY GENERAL OPINION NO. 81-265

Mr. Douglas Smith, Secretary  
Kansas State Board of Embalming  
535 Kansas Ave., Suite 1108  
Topeka, Kansas 66603

Re: Public Health--Embalmers and Funeral Directors--  
Special Permits for Temporary Practice of Funeral  
Directing

Synopsis: Pursuant to K.S.A. 65-1714, the Kansas State Board of Embalming may, in its discretion, issue a special permit for the temporary practice of funeral directing to persons otherwise qualified except for examination. An applicant for a special permit who meets all licensing qualifications stated in K.S.A. 65-1714, but who fails to meet the educational requirements set forth in K.A.R. 63-2-10, may still be considered for a special permit. Since there is no statutory authority for the promulgation of the educational requirements in K.A.R. 63-2-10, these requirements are void and unenforceable. Cited herein: K.S.A. 65-1714, 65-1716, 74-1404, K.A.R. 63-2-10.

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Dear Mr. Smith:

As executive secretary of the Kansas State Board of Embalming, you have requested the opinion of this office regarding qualifications of funeral directors and the board's authority to issue special permits for the temporary practice of funeral directing. Specifically, you wish to know whether the board may issue a

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special permit to an assistant funeral director to operate a funeral home, where the applicant is in the process of completing educational requirements in preparation for the funeral director's examination.

The board, in its discretion, may issue special permits pursuant to the authority granted in K.S.A. 65-1714, which states in pertinent part:

"In the event of the death of the holder of a funeral director's license, or in other special cases, said board may, in its discretion and for good cause shown, issue special permits to persons otherwise qualified except for examination, authorizing the temporary practice of funeral directing until the next examination by the board." (Emphasis added.)

The qualifications of a funeral director are also set forth in this statute. The applicant must be a legal citizen and a resident of the State of Kansas, of legal age and he or she must have had practical experience in funeral directing as an assistant funeral director for at least one year prior to the date of the application. The applicant also must show, by proper documentation, that he or she has assisted in conducting at least twenty-five funeral services.

In addition to the above mentioned qualifications, K.A.R. 63-2-10 states, in pertinent part:

"Beginning May 1, 1977. (A) The applicant for a funeral director's license must submit a transcript showing that said applicant has earned prior credit of not less than two years of general education consisting of not less than 60 semester hours in a junior college, college or university which is accredited by an accrediting agency recognized by the United States commissioner of education as the proper agency for accrediting said schools."

By virtue of this regulation, an applicant who meets all qualifications listed in K.S.A. 65-1714 (other than examination), but who is only in the process of completing the educational requirements of K.A.R. 63-2-10 is not "otherwise qualified" to be considered for a special permit. However, the question arises as to the validity of this regulation.

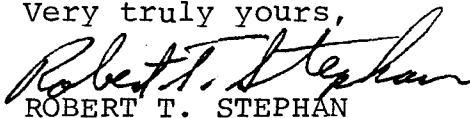
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The power of administrative bodies to adopt rules and regulations is derived from statutory authority, and in the absence of such authority, a rule or regulation is void. Marcotte Realty & Auction, Inc. v. Schumacher, 225 Kan. 193, Syl. ¶3 (1979); Goertzen v. State Department of Social & Rehabilitation Services, 218 Kan. 313, Syl. ¶1 (1975). In light of these well-established principles of administrative law, we have considered the Board's authority for the adoption of K.A.R. 63-2-10.

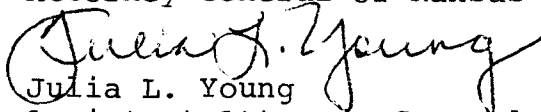
This regulation was promulgated under the stated authority of K.S.A. 74-1704, which vests in the Board the power "to make reasonable rules and regulations establishing ethical standards and practices for embalming and funeral directing." However, it is K.S.A. 65-1723 which gives the Board authority "to adopt and enforce all necessary rules and regulations not inconsistent with this act for examining and licensing funeral directors." (Emphasis added.) The qualifications of a funeral director, stated earlier and set forth in K.S.A. 65-1714 do not include educational requirements to be completed prior to examination. Thus, although the requirements pertain to licensing, the provisions of K.A.R. 63-2-10 exceed the statutory qualifications set by the legislature. "An administrative rule and regulation which goes beyond that which the legislature has authorized, which is out of harmony with or violates the statute, or which alters, extends, limits or attempts to breathe life into the source of its legislative power, is said to be void." Goertzen v. State Department of Social & Rehabilitation Services, 218 Kan. at 316; State, ex rel., v. Columbia Pictures Corporation, 197 Kan. 448, 454, (1966). Accordingly, we find no statutory authority for the promulgation of the educational requirements in K.A.R. 63-2-10, and it is our opinion these requirements are void and unenforceable.

Therefore, in conclusion, pursuant to K.S.A. 65-1714, the Kansas State Board of Embalming may, in its discretion, issue a special permit for the temporary practice of funeral directing to persons otherwise qualified except for examination. An applicant for a special permit who meets all licensing qualifications stated in K.S.A. 65-1714, but who fails to meet the educational requirements set forth in K.A.R. 63-2-10, may still be considered for a special permit. Since there is no statutory authority for the promulgation of the educational requirements in K.A.R. 63-2-10, it is our opinion these requirements are void and unenforceable.

Very truly yours,

  
ROBERT T. STEPHAN

Attorney General of Kansas

  
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Assistant Attorney General

RTS:WRA:JLY:phf