



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 81- 276

Mr. Bruce A. Hertel
Ellis County Sheriff
Law Enforcement Center
Hays, Kansas 67601

Re: State Departments; Public Officers, Employees --
Public Employer-Employee Relations -- Collective
Bargaining With Sheriff's Employees

Synopsis: The board of county commissioners is the proper governing body and the county is the public employer for sheriff's department employees for the purposes of the Kansas Public Employer-Employee Relations Act. Participation by the sheriff is not necessary to effect a valid memorandum of agreement between the county commission and the sheriff's employees organization, and such an agreement is binding except where it is limited by K.S.A. 75-4330. Any such agreement may not affect the sheriff's statutory rights of appointment and revocation pursuant to K.S.A. 19-803 and 19-805. Cited herein: K.S.A. 19-803, 19-805, K.S.A. 1980 Supp. 19-805a, K.S.A. 75-4321, 75-4322, 75-4327, 75-4329, 75-4330, 75-4331, and Kan. Const. Art. 15, §2.

* * *

Dear Sheriff Hertel:

You request the opinion of this office regarding your authority in dealing with the Ellis County Sheriff's Department employees' union, Service Employees Union Local 513 AFL-CIO-CLC. Your specific questions are as follows:

- "1. Am I required to negotiate with the Sheriff's Department Union?

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- "2. Is negotiating a union contract a duty of the Board of County Commissioners, the Sheriff, or both combined?
- "3. Do I have to abide by, or am I bound by law, to a union contract signed by the Board of Ellis County Commissioners, if I did not negotiate or sign the contract?
- "4. Are the Sheriff's statutory rights as set forth in K.S.A. 19-805 and 19-803, Deputy Sheriff and Undersheriff appointments, negotiable items in the union contract? Such as setting procedure for filling vacancies and job openings, and the revocation of appointments."

You also state that the Ellis County Board of County Commissioners has elected to bring itself within the purview of the Public Employer-Employee Relations Act, K.S.A. 75-4321 et seq. (hereinafter "the Act").

The questions posed here deal with one general subject and thus may be more easily answered after a discussion of the problems and relationships involved. Your specific questions will be answered after this general discussion.

The Public Employer-Employee Relations Act provides the framework for public employee organization and negotiations. It allows the governing bodies of public employers to sanction public employee organizations by electing to bring a governmental unit within the Act. The legislative purpose of the Act is stated in K.S.A. 75-4321(b) as follows:

"Subject to the provisions of subsection (c), it is the purpose of this act to obligate public agencies, public employees and their representatives to enter into discussions with affirmative willingness to resolve grievances and disputes relating to conditions of employment, acting within the framework of law. It is also the purpose of this act to promote the improvement of employer-employee relations within the various public agencies of the state and its political subdivisions by providing a uniform basis for recognizing the right of public employees to join organizations of their own choice, or to refrain from joining, and be represented by such organizations in their employment relations and dealings with public agencies."

Subsection (c) referred to above states as follows:

"The governing body of any public employer, other than the state and its agencies, by a majority vote of all the members may elect to bring such public employer under the provisions of this act, and upon such election the public employer and its employees shall be bound by its provisions from the date of such election. Once an election has been made to bring the public employer under the provisions of this act it continues in effect unless rescinded by a majority vote of all members of the governing body. No vote to rescind shall take effect until the termination of the next complete budget year following such vote."

Hence, the requirements of this Act only affect public employees and employers after the required election.

"Public employee" and "public employer" are defined for the purposes of the Act by K.S.A. 75-4322 as follows:

"(a) 'Public employee' means any person employed by any public agency, except those persons classed as supervisory employees, professional employees of school districts, as defined by subsection (c) of K.S.A. 72-5413, elected and management officials, and confidential employees.

. . . .

"(f) 'Public agency' or 'public employer' means every governmental subdivision, including any county, township, city, school district, special district, board, commission, or instrumentality or other similar unit whose governing body exercises similar governmental powers, and the state of Kansas and its state agencies." (Emphasis added.)

A county is thus a public employer, and employees of the county are public employees except as excluded by definition. As noted, in order for the Act to be applicable to these governmental units and their employees, the "governing body" must vote to operate under the Act. "Governing body" is defined by K.S.A. 75-4322(g) as follows:

"(g) 'Governing body' means the legislative body, policy board or other authority of the public employer possessing legislative or policymaking responsibilities pursuant to the constitution or laws of this state."

A board of county commissioners exercises the county's legislative responsibilities pursuant to the laws of the state, and is thus the governing body for the county. Arguably, the sheriff could be said to be the proper governing body for the sheriff's department as the sheriff could be within the statutory language of "or other authority of the public employer." However, application of the doctrine of ejusdem generis, a commonly used rule of statutory construction, leads to a different construction. The doctrine, based on the latin phrase meaning of the same kind, class or nature, applies when interpreting the meaning of a statute containing a list of specific nouns, followed by words of a general nature and the specific words control over the general. See Stephens v. Van Arsdale, 227 Kan. 676, 684 (1980). Hence, the phrase "or other authority of the public employer," should be limited to include only those same kinds of governmental entities contained in the list preceding it. In this instance, a sheriff is an administrative officer and is not similar to a legislative body or policy board. Thus, in our opinion the county sheriff should not be considered a governing body for the purpose of this Act.

Negotiations between the public employer and the employee organization under the Act are conducted by the "representative of the public agency" and the employee organization. Such negotiations occur after the public employer has recognized the employee organization pursuant to K.S.A. 75-4327. The term "representative of the public agency" is defined by K.S.A. 75-4322(h), which states in pertinent part thus:

"(h) 'Representative of the public agency' means the chief executive officer of the public employer or his or her designee, except when the governing body provides otherwise, and except in the case of the state of Kansas and its state agencies. Such chief executive shall be for counties, the chairman of the board of county commissioners; for cities, the mayor, city manager or city superintendent; for school districts, the president of the board of education; and for other local units, such similar elected or appointed officer."
(Emphasis added.)

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The negotiator for the public employer in this situation normally would be the chairman of the board of county commissioners, unless the board of commissioners provides otherwise. We note only that an obvious choice for an alternative or additional representative might be the county sheriff, as the sheriff is the person charged with the responsibility of managing the sheriff's department.

The above analysis of the positions of the county and sheriff under the Act make it possible to answer your first two questions, which are phrased as follows:

- "1. Am I required to negotiate with the Sheriff's Department Union?
- "2. Is negotiating a union contract a duty of the Board of County Commissioners, the Sheriff, or both combined?"

As the above analysis indicates, it is the duty of the representative of the public agency to negotiate with an employee's organization. The sheriff is not required or authorized to do so, unless he has been appointed the representative of the public agency by the board of county commissioners; otherwise, the representative of the public agency is the chairman of the board of county commissioners.

Your third question is as follows:

- "3. Do I have to abide by, or am I bound by law to a union contract signed by the Board of Ellis County Commissioners, if I did not negotiate or sign the contract?"

As we noted above, the Act provides the framework within which public employer-public employee relations occur. K.S.A. 75-4331 provides that agreements between representatives of the public agency and the recognized employee organization will be in the form of a memorandum of agreement. As a practical matter, such memoranda of agreement are incorporated into the employment contracts entered into between the county and the union employees. The Act does not require participation in the agreement process by persons other than the representative of the public agency and the recognized employee organization. Nonparticipation in the agreement process by a sheriff does not work to void an agreement lawfully reached. Public officers such as a sheriff have only those powers expressly granted or clearly necessary to the effective exercise of those powers expressly granted. See, State, ex rel., v. Younkins, 108 Kan. 684 (1921). Interference with lawful

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county contracts is not a power available to a sheriff under Kansas law. Where an agreement between the county commission and the employee's union is lawfully reached it must be followed by the sheriff as he is without authority to do otherwise.

Your fourth question is:

"4. Are the sheriff's statutory rights as set forth in K.S.A. 19-805 and 19-803, Deputy Sheriff and Undersheriff appointments, negotiable items in the union contract? Such as setting procedure for filling vacancies and job openings, and the revocation of appointments."

K.S.A. 75-4330 limits the scope of a memorandum of agreement and provides in pertinent part thus:

"(a) The scope of a memorandum of agreement may extend to all matters relating to conditions of employment, except proposals relating to (1) any subject preempted by federal or state law or by a municipal ordinance passed under the provisions of section 5 of article 12 of the Kansas constitution, (2) public employee rights defined in K.S.A. 75-4324, (3) public employer rights defined in K.S.A. 75-4326" (Emphasis added.)

Thus, agreements between the representative of the public agency and the recognized employee organization may not extend to matters preempted by state law. Any part of an agreement preempted by Kansas law is void per K.S.A. 75-4330(a)(1). The limitations stated in K.S.A. 75-4330 are the only exceptions to compliance with agreements contemplated by the Act.

Accordingly, we believe the matters about which you inquire are preempted by state law. Kansas law gives the sheriff certain exclusive powers with regard to employees of the sheriff's department. These powers may be found in K.S.A. 19-803 and 19-805 and K.S.A. 1980 Supp. 19-805a. These statutes allow the sheriff to appoint such undersheriffs and deputies as he thinks proper and to revoke these appointments at his pleasure. Revocation of appointments at the pleasure of the appointing authority is common in Kansas; the Kansas Constitution provides that the tenure of an office will be at the pleasure of the appointing authority unless otherwise provided. See Kan. Const., Art. 15, §2. Appointment "at the pleasure of" has been construed continuously as the power to revoke appointments without any need for a showing of "good cause." In

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Haney v. Cofran, 94 Kan. 332, (1915), the Kansas Court stated the following in upholding the summary discharge of a policeman by the mayor:

"If a policeman's tenure of office is not fixed by the legislature, and it is not so fixed unless controlled by the civil-service law, then he holds 'during the pleasure of the authority making the appointment.' There is nothing doubtful about that language. It is clear, imperative and to the point. So a policeman, being a public officer with no term fixed, holds his office at the pleasure of the authority appointing him."

See also Ross v. City of Cedarville, 123 Kan. 344, (1927), and generally 56 Am.Jur.2d. Municipal Corporations, §333 (1971) and 3 McQuillin, Municipal Corporations, §12.112, (3rd rev. ed. 1979). However, even in situations where "good cause" need not be shown in revoking an appointment, an appointment cannot be revoked for constitutionally impermissible reasons such as consideration of race, sex, religion, age, national origin, ancestry, or for the exercise of first amendment rights. See Perry v. Sindermann, 408 U.S. 593, 33 L.Ed.2d 570, 92 S.Ct. 2694 (1972).

Because the powers of appointment and revocation of appointments of deputies and the undersheriff are under the exclusive control of the sheriff and, thus, a subject preempted by Kansas law pursuant to K.S.A. 75-4330, the county commission and employees' organization may not enter into a contract or memorandum of agreement which attempts to limit these powers. In short, these are not negotiable items as they are exempted from the memorandum of agreement as a matter of law.

Of final note is the fact that your employees are required by K.S.A. 75-4327(f) to be in a separate employee bargaining unit as they are uniformed police employees. K.S.A. 75-4327(f) may also proscribe non-uniformed employees of your office from being involved in the same bargaining unit as uniformed employees.

To summarize, you are not required or authorized to negotiate with the Sheriff's Department Union unless the board of county commissioners designates you as the "representative of the public agency." Negotiation of a union contract on behalf of the county is the duty of the "representative of the public agency," normally the chairman of the board of county commissioners. The agreement reached between the Sheriff's Department Union and the county commission is enforceable even

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though you did not participate, except where the agreement is limited by K.S.A. 75-4330. The sheriff's power as set forth by K.S.A. 19-803 and 19-805 may not be limited by any agreement between the county commission and the employees union as this is an area preempted by Kansas law.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Bradley J. Smoot
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RTS:BJS:hle