



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 82- 57

The Honorable William R. Novak  
State Representative, Seventieth District  
Room 182-W, Statehouse  
Topeka, Kansas 66612

Re: State Departments; Public Officers, Employees -- Department  
of Transportation -- Secretary's Power to Reorganize Department

Synopsis: The Secretary of Transportation has express statutory authority to organize the Department of Transportation in any manner he deems most efficient, so long as it is not in conflict with the act creating the Department (L. 1975, ch. 426) or other provisions of law. Thus, to reorganize the Department so as to eliminate the statutorily-created Division of Aviation and the statutorily-created position of Director of Aviation, exceeds the Secretary's authority and creates a direct conflict with manifested legislative intent. Cited herein: K.S.A. 75-5006, K.S.A. 1981 Supp. 75-5007, 75-5008, K.S.A. 75-5009, 75-5010, 75-5015.

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Dear Representative Novak:

You have requested our opinion regarding the Secretary of Transportation's reorganization of the Department of Transportation. Specifically, you have inquired whether the Secretary has the authority to reorganize the Department so as to eliminate the Division of Aviation and its chief administrative officer, the Director of Aviation.

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Initially, we note that the Department's Division of Aviation and the Director of Aviation are provided for in K.S.A. 75-5010, which states:

"There is hereby established within and as a part of the department of transportation a division of aviation, which shall be administered, under the supervision of the secretary of transportation, by the director of aviation, who shall be the chief administrative officer of said division. The director of aviation shall be appointed by the secretary of transportation and shall serve at the pleasure of the secretary. The director of aviation shall be in the unclassified service under the Kansas civil service act and shall receive an annual salary fixed by the secretary of transportation, with the approval of the state finance council."

From our review of the materials submitted with your request, as well as additional materials furnished us by the Department's chief attorney, it is clear that the Secretary of Transportation has, in fact, reorganized the Department of Transportation, effective January 1, 1982. The information provided us regarding the details of the reorganization indicates that, as a result of the reorganization: (1) the Division of Aviation has been eliminated; (2) the functional responsibilities of this division have been assigned to the Division of Planning and Development; (3) the position of Director of Aviation has been eliminated; and (4) the chief administrative officer of the Division of Aviation has become a subordinate officer of the Division of Planning and Development. Thus, the Secretary of Transportation's reorganization of the Department has resulted in an organizational structure which ignores the provisions of K.S.A. 75-5010, and the question arises, then, as to the Secretary's authority to effect such changes.

Of pertinence to our consideration is the general principle of law stated in Murray v. State Board of Regents, 194 Kan. 686, 689, 690 (1965):

"Governmental agencies are creatures of the legislature, and can exercise only such powers as are expressly conferred by law and those necessary to make effective the powers expressly conferred. (State, ex rel., v. City of Kansas City, 181 Kan. 870, 317 P.2d 806; State, ex rel., v. City of Overland Park, 192 Kan. 654, 391 P.2d 128)."

As a corollary, the predominant view is that the determination of implied powers should be limited to situations where, without them, the governmental agency would have no way to carry out its express statutory powers. See, e.g., Edwards County Commissioners v. Simmons, 159 Kan. 41 (1944); Womer v. Aldridge, 155 Kan. 446 (1942); State, ex rel., v. Davis, 114 Kan. 270 (1923); The State, ex rel., v. Wooster, 111 Kan. 830 (1922); The State, ex rel., v. Younkin, 108 Kan. 634 (1921); Young v. Regents of State University, 87 Kan. 239 (1912); and Brown County v. Barnett, 14 Kan. 627 (1875).

Here, we note the express authority granted the Secretary by K.S.A. 75-5015(a) which provides, in part, that "[t]he secretary of transportation may organize the department of transportation in the manner he or she deems most efficient, so long as the same is not in conflict with the provisions of this act or other provisions of law . . ." (Emphasis added.) It is clear, therefore, that the legislature has granted the Secretary latitude in organizing the Department, with the stipulation that the product of his efforts not be in conflict with the act which established the Department (L. 1975, ch. 426) or with other provisions of law. Is there such a conflict created by the Secretary's reorganization? We believe there is.

In reaching this conclusion we have been guided by well established rules of statutory construction. Of principal significance is the following statement in Southeast Kansas Landowners Ass'n v. Kansas Turnpike Auth., 224 Kan. 357 (1978):

"The fundamental rule of statutory construction, to which all others are subordinate, is that the purpose and intent of the legislature governs when that intent can be ascertained from the statutes. Eason v. Farmers Insurance Co., 221 Kan. 415, Syl. 2, 560 P.2d 117 (1977); Thomas County Taxpayers Ass'n v. Finney, 223 Kan. 434, 573 P.2d 1073 (1978); Brinkmeyer v. City of Wichita, 223 Kan. 393, 573 P.2d 1044 (1978)." 224 Kan. at 367.

Also relevant is the Court's pronouncement in Lakeview Gardens, Inc. v. State, ex rel. Schneider, 221 Kan. 211 (1976):

"[T]his court must ascertain and give effect to the intent of the legislature. In so doing we must consider the language of the statute; its words are to be understood in their plain and ordinary sense. (Hunter v. Haun, 210 Kan. 11, 13, 499 P.2d 1087; Roda v. Williams, 195 Kan. 507, 511, 407 P.2d 471.) When a statute is plain and unambiguous this

court must give effect to the intention of the legislature as expressed rather than determine what the law should or should not be. ( Amoco Production Co. v. Arnold, Director of Taxation, 213 Kan. 636, 647, 518 P.2d 453; Jolly v. Kansas Public Employees Retirement System, 214 Kan. 200, 204, 519 P.2d 1391.)" 221 Kan. at 214.

Moreover, "[i]n order to ascertain the legislative intent, courts are not permitted to consider only a certain isolated part or parts of an act but are required to consider and construe together all parts thereof in pari materia." Brown v. Keill, 224 Kan. 195, 200 (1978).

Applying these principles to the question at hand, it is evident from the plain and unambiguous language of K.S.A. 75-5010 that the legislature intended to establish within the Department of Transportation a Division of Aviation, the chief administrative officer of which is the Director of Aviation. In addition, from a review of the entire enactment by which the legislature established the Department of Transportation, we find manifest a legislative purpose that (1) there be five divisions of the Department, i.e., Division of Transportation Administration (K.S.A. 75-5006), Division of Transportation Operations (K.S.A. 1981 Supp. 75-5007), Division of Engineering and Design (K.S.A. 1981 Supp. 75-5008), Division of Planning and Development (K.S.A. 75-5009) and Division of Aviation (K.S.A. 75-5010); (2) these five divisions are to be the major subdivisions of the Department; and (3) each division is to be administered by a chief administrative officer with the title of "director." We also find no indication that the legislature intended the five major subdivisions of the Department to enjoy other than a co-equal status within the Department's organizational structure.

Thus, even though the functions of the Division of Aviation are being perpetuated through the Division of Planning and Development, the fact remains that, through plain and unambiguous language, the legislature has clearly stated its intent that there are to be five major subdivisions of the Department of Transportation, one of which is to be the Division of Aviation, administered by the Director of Aviation. Clearly, then, to eliminate the Division of Aviation and the position of Director of Aviation is in direct contravention of expressed legislative intent. Hence, the Secretary's reorganization of the Department is in obvious conflict with the act creating the Department, and thus within the proscription of K.S.A. 75-5015. The Secretary has exceeded his express

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statutory authority, and even though his reorganization plan may be more convenient or efficient, there is nothing to indicate that such reorganization is necessary to the exercise of his express powers.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Robert T. Stephan".

ROBERT T. STEPHAN  
Attorney General

A handwritten signature in cursive script, appearing to read "W. Robert Alderson".

W. Robert Alderson  
First Deputy Attorney General

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