March 22, 1984

ATTORNEY GENERAL OPINION NO. 84-27

Mr. L. O. Bengtson
City Attorney
114 East Iron
P. O. Box 903
Salina, Kansas 67401

Re: Labor and Industries--Workmen's Compensation--Firemen's Relief Association Members; Procedure for Exemption

Synopsis: Pursuant to K.S.A. 44-505d, the governing body of a firemen's relief association in any unit of local government may conduct an election, prior to August 1 of any year, to determine whether its members shall be excepted from the provisions of the Workmen's Compensation Act. Cited herein: K.S.A. 44-505d, 1984 House Bill No. 2635.

* * *

Dear Mr. Bengtson:

You request our interpretation of K.S.A. 44-505d. Specifically, you advise that the Firemen's Relief Association of the city of Salina did not, prior to August 1, 1975, conduct an election to determine whether its members desired to be exempt from the provisions of the Workmen's Compensation Act, and ask whether said members may now conduct such an election.

K.S.A. 44-505d provides as follows:

"(a) The governing body of each firemen's relief association in any unit of local
government of this state shall conduct an election among all of the members of the association prior to August 1, 1975, to determine whether such members shall be excepted from the provisions of the workmen's compensation act. If a majority of the members of any firemen's relief association in any unit of local government of this state vote in such election to except the members of such association from the provisions of the workmen's compensation act, the governing body of such association and the governing body of such unit of local government may enter into an agreement in writing to except such members from the provisions of the workmen's compensation act. Upon the execution of such agreement, the governing body of the firemen's relief association shall file a copy of the agreement and a statement of election to except the members of such association from the provisions of the workmen's compensation act with the director of workers' compensation.

"(b) Prior to August 1 in any year thereafter, the governing body of any firemen's relief association which has been excepted from the provisions of the workmen's compensation act under subsection (a), may conduct an election among all of the members of such association to determine whether such members shall be covered by the provisions of the workmen's compensation act in the manner otherwise provided by law. If a majority of the members of such association vote in such election to come within the provisions of the workmen's compensation act, the governing body of the association shall file with the director of workers' compensation a written statement of election to come within the provisions of the workmen's compensation act. Upon the filing of such statement, the members of such association shall be covered by the provisions of the workmen's compensation act.

"(c) Subsequent to an election resulting in coverage under the workmen's compensation act under subsection (b) and prior to August 1 of any year thereafter, the governing body of any such firemen's relief association may conduct an election in the manner provided
in subsection (a) to except again the members
of such association from the provisions of the
workmen's compensation act as provided in
subsection (a)."

If one were to interpret this statute according to its literal
words, without consideration of legislative intent, one might
conclude that K.S.A. 44-505d(a) requires an election prior to
August 1, 1975, to decide whether a firemen's relief association
wishes to be exempt from coverage under the workmen's compensation
act. It is clear that K.S.A. 44-505d(b) allows associations which
elected to be exempt under subsection (a) to hold subsequent
elections to choose whether to reinstate coverage, and that
K.S.A. 44-505d(c) allows associations which chose to reinstate
coverage by means of subsection (b), to again hold an election
to exempt themselves from coverage under the act. It might be
argued that once an election has been made under the provisions
of subsection (a) to exempt an association from coverage of the
workmen's compensation act, such an association may "flip-flop"
from non-coverage, to coverage, and back again, but that an
association not exempting itself by election prior to August 1,
1975, is forever barred from exercising such option. Such a
literal construction is not mandated, however, since legislative
intent must govern, even though it does not follow the literal
words of a statute. Baker v. R.D. Anderson Construction Co.,
7 K.A.2d 568, 571 (1982).

A consideration of the history of K.S.A. 44-505d indicates
that the legislature did not intend that subsections (b) and
(c) thereof apply only to associations which chose the option
of non-coverage in an election conducted before August 1, 1975.
Specifically, committee minutes indicate that 1975 House Bill
No. 2169 (codified at K.S.A. 44-505d) was introduced to address
instances of duplicate or overlapping coverage under Workmen's
Compensation and the Firemen's Relief Fund, and that the intent
of the bill was to allow a firemen's relief association to elect
which coverage it wanted. In our judgment, the legislature did
not intend that a firemen's relief association be forever bound
by its initial election to retain coverage under the Workmen's
Compensation Act. Rather, we believe the legislature intended
to authorize an election (by any association), prior to August 1
of any year, on the question of retaining workmen's compensation
coverage. Accordingly, it is our opinion that pursuant to K.S.A.
44-505d, the governing body of a firemen's relief association in
any unit of local government may conduct an election, prior to
August 1 of any year, to determine whether its members shall
be excepted from the provisions of the Workmen's Compensation
Act.

Finally, it should be noted that Section 9 of 1984 House Bill
No. 2635 would amend K.S.A. 44-505d as follows:
"On January 1, 1986, K.S.A. 44-505d is hereby amended to read as follows:

"On January 1, 1986, all elections in effect under this section prior to that date to except the members of a firemen's relief association from the provisions of the workmen's compensation act are void and all such members are covered by the workmen's compensation act."

Very truly yours,

[Signature]
ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS

[Signature]
Terrence R. Hearschman
Assistant Attorney General

RTS:BJS:TRH:jm