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August 6, 1984

ATTORNEY GENERAL OPINION NO. 84- 80

Peter E. Rinn
General Counsel
Kansas Department of Social and
Rehabilitation Services
State Office Building, 6th Floor
Topeka, Kansas 66612

Re: State Departments; Public Officers, Employees --
Social and Rehabilitation Services; Blind Persons --
Arbitration Board

Synopsis: County and city departments or agencies that exercise control over county and city-owned and managed property upon which blind vendors vending facilities are located are subject to the jurisdiction of the arbitration board established by K.S.A. 75-3341, as amended, in hearing appeals concerning alleged violations of K.S.A. 75-3337 et seq. Cited herein: K.S.A. 75-3337, 75-3338, 75-3339, 75-3341, as amended by L. 1984, ch. 322, sec. 1, 75-3342, 75-3343, 20 U.S.C.A. §107d-1.

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Dear Mr. Rinn:

As general counsel for the Kansas Department of Social and Rehabilitation Services, you request our opinion concerning the applicability of K.S.A. 75-3337 et seq., to county and city-owned and managed property. Specifically, you inquire whether the arbitration board, as established by K.S.A. 75-3341, as amended by L. 1984, ch. 322, sec. 1, has jurisdiction over those county and city buildings that house vending facilities used

by the blind. That arbitration board convenes for the purpose of hearing appeals concerning allegations that an agency subject to K.S.A. 75-3337 et seq., has failed to comply with its provisions.

K.S.A. 75-3337 was enacted in 1970, and states:

"For the purpose of providing blind persons with remunerative employment, enlarging the economic opportunities of the blind, and stimulating the blind to greater efforts in striving to make themselves self-supporting, blind persons licensed under the provisions of 20 U.S.C. 107, of 1936 . . . shall be authorized to operate vending facilities on any state, county, and city or other property. In authorizing the operation of vending facilities on state, county, and city property preference shall be given, so far as feasible, to blind persons licensed by the division of services for the blind" (Emphasis added.)

The arbitration section, K.S.A. 75-3341, as amended, reads in pertinent part as follows:

"An arbitration board of three persons consisting of one person designated by the vending facilities advisory committee [See K.S.A. 75-3343] who shall serve as chairperson, one person designated by the head of the state department or agency controlling state property over which a dispute arises, and a third person who is not an employee of the departments concerned selected by the two shall hear appeals as provided in subsection (b) of this section.

"(b) If, in the opinion of the division of services for the blind any department or agency in control of the maintenance, operation, and protection of state property is failing to comply with the provisions of this act, or any regulations issued hereunder, it shall appeal to the board." (Emphasis added.)

Confusion is caused by the difference in the emphasized language above. Looking at the above statutes, it is difficult to determine whether the arbitration board applies only to state-owned

facilities or includes county and city facilities. However, an examination of K.S.A. 75-3339(c) may be of benefit. It reads in pertinent part as follows:

"The division of services for the blind, with the approval of the head of the department or agency in control of the maintenance, operation, and protection of the state, county and city or other property on which the vending facility is to be located . . . shall select a location for such vending facility and the type of facility to be provided." (Emphasis added.)

A literal reading of the above statutes would lead one to believe that while K.S.A. 75-3337 et seq., is applicable to state, county and city facilities, K.S.A. 75-3341, as amended, would only apply to state facilities. A general rule of statutory construction is that the intent of the legislature should govern, when such can be established. See City of Salina v. Jagers, 228 Kan. 155, (1980). Furthermore, "where a statute is susceptible to more than one construction, it must be given that construction which, when considered in its entirety, gives expression to its intent and purpose, even though such a construction is not within a strict literal interpretation of the statutes." Reeves v. Board of Johnson County Comm'rs, 226 Kan. 397, 402 (1979). Therefore, in reading the entire act in pari materia, it is our opinion that the term "state property" as used in subsection (b) of K.S.A. 75-3341, as amended, must include county, city and other local property. If the purpose of the Act is to be fulfilled, the arbitration panel must have jurisdiction over county courthouses, city halls, etc.

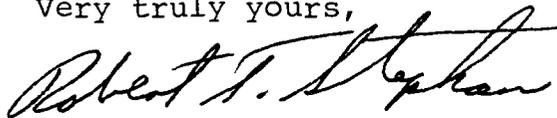
An arbitration board is used to settle disputes, informally and quickly, as opposed to filing suit. (However, K.S.A. 75-3342 does allow judicial review.) To exclude local units of government from arbitration would require blind persons aggrieved by local units to directly seek judicial action for each instance. We conclude that such a result is not the intent of the legislature, nor consistent with the purpose of the Randolph-Sheppard Vending Stand Act, 20 U.S.C.A. § 107 et seq., specifically at 20 U.S.C.A. § 107d-1.

Our position is further supported by K.S.A. 75-3338, which states that: "the term 'state of Kansas' shall include political subdivisions of the state of Kansas, except schools, cities of the third class and townships." (Emphasis added.) As counties and cities are political subdivisions of the state, this definition would encompass these entities. Based on the above, we therefore are of the opinion that county and city department or agencies

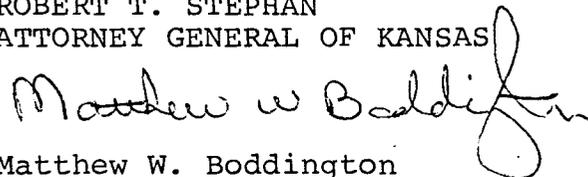
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exercising control over property owned and managed by a county or city upon which blind vendors vending facilities are located are subject to the jurisdiction of the arbitration board established by K.S.A. 75-3341, as amended, in hearing appeals of alleged violations of K.S.A. 75-3337 et seq.

Very truly yours,



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RTS:JSS:MWB:KFC:crw