Dear Mr. Jarczyk:

As Assistant County Counselor for Wyandotte County, you request our opinion as to whether Wyandotte County may withdraw from the Kansas Public Employees Retirement System (KPERS) and give county employees the option to continue participation in KPERS or participate in some other plan adopted by the county.

The KPERS act, K.S.A. 74-4901 et seq., provides that an "eligible employer," as defined by K.S.A. 1984 Supp. 74-4902(13), as amended by L. 1985, Ch. 254, §7, may affiliate with KPERS by adoption of a resolution by the governing or legislative body of the eligible employer. The term "eligible

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employer" includes the State of Kansas as well as counties, cities and other units of government whose employees are covered by social security. K.S.A. 1984 Supp. 74-4910 further states that "[u]pon the filing of a certified copy of such resolutions with the [KPERS] board an election pursuant to this section shall be irrevocable . . . ."

While provisions have been made for some individual members to revoke their election to join (see K.S.A. 1984 Supp. 74-4911; 74-4992), the act makes no provision for revocation by employers. Rather, it is our opinion that the act specifically prohibits withdrawal by an employer which has previously elected to affiliate with KPERS. Thus, while an eligible employer may by resolution elect to affiliate with the Kansas Public Employees Retirement System, such election to do so is irrevocable.

This conclusion is consistent with a prior opinion on this subject issued by Attorney General Frizzell (VI Atty. Gen. Opin. 495), a copy of which is enclosed.

Very truly yours,

ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS

Barbara P. Allen
Assistant Attorney General

Enclosure