



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 88- 104

The Honorable George Teagarden  
State Representative, Twelfth District  
Route 2, Box 89A  
LaCygne, Kansas 66040

Re: Mentally Ill, Incapacitated, Dependent Persons --  
Social Welfare -- Powers and Duties of Secretary of  
Social and Rehabilitation Services; KanWork  
Program

Synopsis: The purpose and intent of the legislature governs when that intent can be ascertained from the statute. 1988 Senate Bill No. 572 (L. 1988, ch. 31, § 3, and 1988 House Bill No. 2644 (L. 1988, ch. 141), allow the Secretary of Social and Rehabilitation Services (SRS) to establish the KanWork program and use funds appropriated for that program. These enactments do not prohibit or limit participation to certain counties. Thus, the legislature has granted to the Secretary of SRS authority to decide in which counties to establish the KanWork program. Absent proof that the Secretary's decision is fraudulent, arbitrary or capricious, Barton county may participate in the program. Cited herein: K.S.A. 39-708c; 39-710; 1988 Senate Bill No. 752, L. 1988, ch. 31, § 3; 1988 House Bill No. 2644, L. 1988, ch. 141.

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Dear Representative Teagarden:

As state representative for the twelfth district, you request our opinion on the legality of expenditures by the Kansas Department of Social and Rehabilitation Services (SRS) whereby the KanWork program will be established in Barton county. You ask this question in light of 1988 Senate Bill No. 572 and the conference committee's report explaining this bill. You state that the report recommended that the counties in which KanWork is implemented be selected from a list of ten specified counties. Barton County was not contained in this list. You therefore question the legality of establishing the program in Barton County as you are of the opinion that "the clear legislative intent was not to appropriate funds for this purpose."

The fundamental rule of statutory construction is that the purpose and intent of the legislature governs when that intent can be ascertained from the statute. Harris Enterprises, Inc. v. Moore, 241 Kan. 59, 65 (1987); In The Matter of The Estate of Estes, 239 Kan. 192, 195 (1986); In re Tax Protests of Midland Industries, Inc., 237 Kan. 867, 871 (1985); State v. Dubish, 236 Kan. 848, 853 (1985); State v. Keeley, 236 Kan. 555, 559 (1985). See 82 C.J.S. Statutes § 321 (1953). When the language in a statute is plain and unambiguous, the intent expressed by the words used in the statute should be followed. State v. V.F.W. Post No. 3722, 215 Kan. 693, 695 (1974). Where the language in the statute is plain and unambiguous there is no need to search for the reasons which prompted the legislature to enact the statute. State v. Bagemehl, 213 Kan. 210 (1973). See Algoma Plywood & Veneer Co. v. Wisconsin Employ. R. Bd., 336 U.S. 301, 69 S.Ct. 584, 93 L. Ed. 691 (1948). See also 73 Am. Jur. 2d Statutes, § 170 (1974); 82 C.J.S. Statutes, § 322 (1953). Explanatory statements of members of the legislature cannot control, or even be considered, where the language of the enactment is clear. United States v. Missouri P.R. Co., 278 U.S. 269, 49 S.Ct. 133, 73 L.Ed. 322 (1928). See 73 Am. Jur. 2d Statutes § 176 et seq. (1974). When the language of the statute is not clear, determining legislative intent allows a consideration of the historical background of enactment. Jackson v. City of Kansas City, 235 Kan. 278, 319 (1984); State ex rel. Ludwick v. Board of Johnson County Comm'rs, 233 Kan. 79 84 (1983). Moreover, when a statute is ambiguous and intent of legislature is not clear, agency interpretation should be considered. D S G Corp. v.

Shelor, 239 Kan. 312, 315 (1986); Lincoln American Corp. v. Victory Life Insurance Co., 375 F. Supp. 112, 118 (10th Cir. 1974).

Thus, the issue becomes whether the language in this particular legislative enactment is clear and unambiguous. 1988 House Bill No. 2644 establishes the KanWork program while 1988 Senate Bill No. 572 appropriates funds for the program for fiscal year 1989. Neither of these enactments specifies which counties the KanWork program is to be administered.

H.B. 2644 (L. 1988, ch. 41, § 3), sets forth the authority of the Secretary of SRS in implementing the KanWork program:

"(a) The secretary of social and rehabilitation services shall be responsible for the planning, integration and coordination of employment and related services for public assistance recipients. All appropriate state and local agencies shall cooperate with the secretary in the planning, integration and coordination of employment and related services as provided under the KanWork act.

"(b) Within the limits of appropriation therefor, the secretary shall establish and administer the KanWork program for recipients of public assistance which shall consist of the following components: Evaluation for eligibility and services; job preparation, training and education; support services; and transitional services."

S.B. 572 (L. 1988, ch. 31, § 3), appropriates funding for SRS programs for the fiscal year 1989. In State ex rel., Stephan v. Carlin, 230 Kan. 252 (1981), the court stated that

"[a]ppropriation bills may direct the amounts of money which may be spent, and for what purposes; they may express the legislature's direction as to expenditures. . . ." 230 Kan. at 258

S.B. 572 discusses the expenditure from the public assistance account for the KanWork program and states in pertinent part:

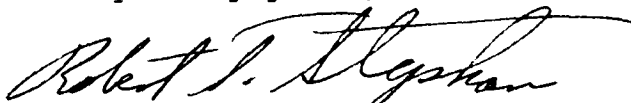
"And provided further, That expenditures from this account shall include expenditures for the KanWork program and other job programs, including expenditures for transitional medical assistance under the KanWork program: And provided further, That expenditures from this account for the KanWork program shall include expenditures for a director of KanWork shall be in the unclassified service under the Kansas civil service act and shall be in addition to other positions in the department of social and rehabilitation services in the unclassified service under the Kansas civil service act as prescribed by law: . . . ."

There is no provision in the legislative enactments concerning the KanWork program which prohibits SRS from establishing the KanWork program in Barton county. The legislature can and in many instances does limit expenditures of public funds by administrative agencies. For example, Section 3 of S.B. 572 specifically limits expenditures from the social welfare fund for the Topeka or Kansas City workshop for the blind. Absent specific legislative directives or prohibitions, however, discretionary authority may be reasonably exercised by the agency delegated that authority. Matzke v. Block, 542 F. Supp. 1107, 1114 (10th Cir. 1982); Tew v. Topeka Police & Fire Civ. Serv. Comm'n, 237 Kan. 96, 100 (1985).

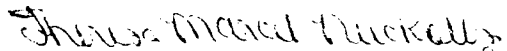
The Secretary of SRS has the power and duty to administer and supervise general policies relating to social welfare programs. K.S.A. 39-708c. Under K.S.A. 39-710, the Secretary has broad discretion in making expenditures in order to perform duties and services necessary to promote social welfare in the state of Kansas. Thus, the Secretary may exercise that authority where not inconsistent with state law. We find no provision in the new law prohibiting the Secretary from establishing the KanWork program in Barton county. While the committee reports prepared by Legislative Research discuss certain target counties, legislative enactment does not reflect a legislative consensus on the issue.

In summary, when the language of a statute is clear and unambiguous on its face, inquiry into the history of its enactment need not be made. The legislation enacting and appropriating funds for the KanWork program clearly delegates much discretion to the Secretary of SRS. Absent specific directives or prohibitions, appropriated funds may be spent for any legal purpose the receiving public agency has the authority to make expenditures for. The legislative enactments concerning the KanWork program do not direct or prohibit a specific county's participation in the KanWork program. It is assumed that if the legislature desired such a restriction it would have been included in the law. In the absence of such a provision, it is our opinion that, without any evidence that the agency acted fraudulently, arbitrarily or capriciously, SRS has been legislatively granted the authority to establish the KanWork program in Barton county.

Very truly yours,



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