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ATTORNEY GENERAL OPINION NO. 88- 150

The Honorable Audrey Langworthy
State Senator, Seventh District
6324 Ash
Prairie Village, Kansas 66208-1369

Re: Minors -- Children and Youth Advisory Committee --
Compensation; Office Space and Staff Assistance

Synopsis: K.S.A. 38-1401 et seq. does not permit members of the children and youth advisory committee to divest themselves of statutorily imposed functions or duties. Membership in the committee or its subcommittees is statutorily limited to those entities set forth under K.S.A. 38-1401. However, in furtherance of duties set forth under K.S.A. 38-1402, the advisory committee may accept voluntarily given information from non-members. Payments authorized pursuant to K.S.A. 38-1403 may be made only to members of the committee. Cited herein: K.S.A. 38-1401; 38-1402; 38-1403; 75-3223.

* * *

Dear Senator Langworthy:

You request our opinion regarding the children and youth advisory committee. You inform us that, in order to assist it in awarding grants from the family and children trust fund, the advisory committee has established a subcommittee made up of certain of its members and of volunteers from children's organizations. You ask (1) whether the advisory committee has the authority to establish a subcommittee which has some

members who are not members of the advisory committee, and (2) if such non-members may be included on a subcommittee, whether these non-member individuals may be paid travel and per diem expenses associated with conducting meetings.

K.S.A. 38-1401 et seq. establishes the children and youth advisory committee and sets forth the various functions, duties, powers and privileges of that body. K.S.A. 38-1401(a) dictates that the fourteen members of the committee be comprised of four secretaries from certain agencies, or their designees, two state representatives and two senators, the chief justice of the Kansas supreme court or his designee, and five members appointed by the governor. Thus, the fourteen person advisory committee must be made up of members possessing the prerequisite characteristics. By definition a subcommittee is "[a] subordinate committee composed of members appointed from the main committee." American Heritage Dictionary 1281 (New College Edition 1976). Thus, a subcommittee of the advisory committee must be made up of members of the main committee.

K.S.A. 38-1401(d) allows the advisory committee to employ a coordinator for the committee in order to provide staff assistance to the committee. Except as set forth under K.S.A. 38-1401(d), there does not appear to be statutory authority permitting the committee to employ other staff. Information provided indicates that the non-members in question are volunteers, not employees. Thus, the issue becomes to what degree does the committee have authority to delegate or share its duties with non-members.

K.S.A. 38-1402 sets forth the duties of the children and youth advisory committee:

"(a) Provide advocacy for children in the governor's office and other public and private, state and local agencies affecting children;

(b) encourage citizen and community awareness as to the needs and problems of children;

(c) advise the governor and the legislature on the needs and problems of children;

(d) review and make recommendations concerning planning and coordination of programs for children; and

(e) prepare and submit to the governor and the legislature an annual report evaluating the level and quality of all programs, services and facilities provided to children by state agencies."

Thus, K.S.A. 38-1401 et seq. creates a body whose main tasks can be summarized as helping to increase governmental and public awareness of the needs and problems of Kansas youth and children. In order to avoid a pure delegation of legislative power, the legislature limits the power of its administrative bodies and enjoins certain procedures and rules. See 73 C.J.S., Public Administrative Law and Procedure, § 28 (1983). Legislators may delegate fact finding authority to an administrative body. Pollard v. Roberts, 283 F. Supp. 248, 255, aff'd 393 U.S. 14, 89 S.Ct. 47, 21 L.Ed. 2d 14 (1968). However, members of an administrative agency must be appointed in accordance with applicable law. 1 Am. Jur. 2d, Administrative Law, § 60 (1962). K.S.A. 38-1401 et seq. does not provide for the appointment of additional volunteer non-members to either the committee or a subcommittee.

However, in order to perform the duties set forth under K.S.A. 38-1402, the advisory committee has not been limited in the manner by which it gathers necessary information. In order to accomplish information gathering tasks, inquisitorial powers necessarily allow visitation with, assistance by, or input from volunteers, though the duties set forth under K.S.A. 38-1402 must be performed by and remain vested in the advisory committee, whose membership is dictated by K.S.A. 38-1401.

It is therefore our opinion that K.S.A. 38-1401 et seq. does not allow the members of the advisory committee to divest themselves of statutorily granted functions and duties. However, the committee has the implied authority to choose the methodology by which it gathers information necessary to perform such functions and duties. This implied authority may allow the committee to seek the assistance of volunteer non-members in gathering necessary information.

Your second inquiry, concerning compensation under K.S.A. 38-1403, further evidences legislative intent to limit official involvement to members of the committee.

"Members of the children and youth advisory committee established by K.S.A. 38-1401 attending meetings of such committee, or attending a subcommittee meeting thereof authorized by such committee, shall be paid amounts provided in subsection (e) of K.S.A. 75-3223 and amendments thereto from moneys appropriated to the department of social and rehabilitation services." (Emphasis added).

This statute clearly contemplates subsistence and mileage payments only to members of the children and youth advisory committee. Thus, although the legislature contemplated subcommittees, these subcommittees are to be made up of members of the main advisory committee. K.S.A. 38-1403 allows payments only to such members. Therefore, K.S.A. 38-1401 et seq. does not approve or authorize payments provided in K.S.A. 75-3223(e) to be paid to non-member volunteers.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



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