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ATTORNEY GENERAL OPINION NO. 90- 2

Mr. Walter A. Hefner, Chairman
Shawnee County Civil Service Board
Room B-22-A, Courthouse
Topeka, Kansas 66603

Re: Counties and County Officers -- Employment Systems;
Civil Service System in Urban Area and Other
Counties -- Home Rule or Contractual Alteration of
Administrative Board's Jurisdiction

Counties and County Officers -- General Provisions
-- Home Rule Powers; Home Rule Alteration of Powers
of Civil Service Board

Synopsis: While generally a county civil service board organized pursuant to K.S.A. 19-4303 et seq. has jurisdiction to hear and investigate certain grievances or complaints involving employees of the sheriff's department, jurisdiction may be altered or affected by an agreement entered into by those employees or by a county home rule resolution. Whether jurisdiction over a particular employee or matter has been altered by a contract or a home rule resolution remains a question of fact which should be determined on a case by case basis. Cited herein: K.S.A. 19-101a; 19-4303; 19-4311; 19-4322; 19-4327.

* * *

Dear Mr. Hefner:

As Chairman of Shawnee County Civil Service Board, you request our opinion on the following issues:

"1(a) Does the Shawnee County Civil Service Board have jurisdiction to hear and investigate a grievance or complaint that is filed with it, if such grievance or complaint is filed by an employee who is represented by a recognized employee organization, and the subject of the grievance or complaint is a demotion, suspension, termination, (covered in the agreement); and 1(b) when the subject of the complaint entails transfers or Civil Rights discrimination (not covered in the agreement) within the Sheriff's Department.

"2(a) Does the Shawnee County Civil Service Board have the authority, under it's general powers, to undertake an investigation, on their own volition, of conditions relating to demotions, suspensions, terminations (covered in the agreement); and 2(b) transfers and Civil Rights issues (not in the agreement) within the Sheriff's Department. And if so, may the Board enforce its recommendations."

As an urban county (as defined by statute) Shawnee county was required to create the civil service board pursuant to K.S.A. 19-4303 et seq. The board is statutorily empowered with certain authority which includes the power to:

"(a) [establish a] procedure for making appointments and promotions, the rejection of ineligible applicants for positions, competitive examinations of applicants, creation of lists of eligible applicants ranked according to grades achieved in examinations, and public notice of examinations;

"(b) Set up personnel regulations covering leaves of absence with or without pay, reinstatements, layoffs, vacations, procedures for changes of rates of pay and other conditions of employment;

"(c) Adopt, modify and classify personnel positions in the sheriff's office upon organization of the board;

. . .

"(f) Supervise the enforcement and effect of this act;

. . .

"(h) Conduct hearings and hear complaints by or against personnel for the purpose of demotion, suspensions or removal of personnel." K.S.A. 19-4311 (Emphasis added).

K.S.A. 19-4322 discusses how vacancies in the sheriff's office are to be filled:

"Vacancies in positions under the provisions of this act shall be filled, so far as practicable, by promotions from among persons holding positions and in accordance with the rules of the board. Promotions shall be based upon merit and fitness to be ascertained by competitive or noncompetitive examination in which the employee's efficiency, character, conduct, and length of service shall all constitute a factor." (Emphasis added).

Thus, the board may presumably adopt rules concerning how vacancies shall be filled which may contain language concerning civil rights. K.S.A. 19-4327 discusses dismissals and suspensions by the sheriff and sets forth the authority of the board to hear and consider whether such actions were reasonable:

"(d) After the hearing and consideration of the evidence for and against a dismissal, the board shall approve or disapprove such action and may make any one of the following appropriate orders:
(1) Order the reinstatement of the employee and the payment to the employee of such salary as has been lost by reason of such dismissal. (2) Sustain the dismissal of such employee. (3) Except as provided above the board may sustain the dismissal, but may order the name of the dismissed employee returned to the

appropriate registers, or may take steps to effect the transfer of such employee to a comparable position in another department.

"(e) The board shall establish such rules as may be necessary to give effect to the provisions of the above section." K.S.A. 19-4327. (Emphasis added).

Thus, K.S.A. 19-4303 et seq. clearly permits the civil service board to take certain action when there is a demotion, suspension or termination of certain sheriffs' employees. The issues thus become (1) whether such authority may be exercised by the board sua sponte and (2) whether such authority may be affected by (a) an exercise of county home rule authority or (b) a contract between the county and the affected employees.

In that it is empowered to investigate facts, weigh evidence, draw conclusions as to the basis for official actions and exercise discretion of a judicial nature, the civil service board created pursuant to K.S.A. 19-4303 et seq. is a quasi-judicial administrative board. Ratley v. Sheriff's Civil Service Board of Sedgwick County, 7 Kan.App.2d 638, 641 (1982); See also Pork Motel Corp. v. Kansas Department of Health and Environment, 234 Kan. 374 (1983); 1 Am.Jur.2d Administrative Law, § 158 et seq. (1962). As with all general powers enjoyed by an administrative board, the adjudicatory powers of an administrative agency are determined by the terms of the constitutional or statutory grant of authority. "An administrative agency is a tribunal of limited jurisdiction and may act only within the jurisdiction conferred upon it and may make only such orders as are authorized by the act creating or empowering it." 1 Am.Jur.2d Administrative Law, § 183 (1962).

K.S.A. 19-4303 et seq. provide for formal review of certain matters by the Shawnee County Civil Service Board. Moreover, K.S.A. 19-4311(f) permits the board to supervise the enforcement and effect of the act. See Attorney General Opinion No. 84-77. These powers permit the board authority over matters and areas set forth in the act. Matters discussed and set forth in the act include demotion, suspension and removal. Thus, the statute empowers the board with certain authority over such matters. It does not appear contrary to the act to imply authority to investigate such matters sua sponte. Rather, such authority may be

necessary in order to ensure that the act is given effect. However, such authority does not permit the board to supersede the initial authority granted to the sheriff or to direct such actions, but rather, the board remains a review board. See Attorney General Opinion No. 75-34. The orders made by the board must comply with and cannot exceed statutory authority. See K.S.A. 19-4237.

The second issue involves whether the authority granted to the Shawnee County Civil Service Board pursuant to K.S.A. 19-4303 et seq. may be altered by a contract or a home rule resolution.

When asked to review an action by the Shawnee county sheriff, the Kansas Supreme Court held that former deputies seeking to recover compensation should first exhaust their contractual and administrative remedies before resorting to the court. Atteberry et al. v. Ritchie, 243 Kan. 277 (1988). The trial court examined the grievance procedures set forth in the memorandum of understanding (MOU: a contract entered into pursuant to K.S.A. 75-4331 between the Fraternal Order of Police, the sheriff, and the Shawnee county board of county commissioners), and held that those contractual and administrative remedies were inadequate. The Kansas Supreme Court overruled that finding because there had not as yet been a showing that the grievance procedures provided in the MOU were inadequate or futile. The court recognized that an agreement entered into pursuant to K.S.A. 75-4330 could contain grievance and arbitration procedures which were binding upon the parties. Id. at 284. The court stated that "dispute resolution procedures embodied in collective bargaining agreements are to be enforced against those who are parties to the agreement (citation omitted) [and] appellees cannot claim the benefits of their collectively bargained agreement, having neglected or refused to accept its burdens and responsibilities." Id. at 284-285. Based upon the failure of the disgruntled employees to avail themselves of the contractually agreed to procedures, the Kansas Supreme Court concluded that the trial court should not have considered the matter.

Unless contrary to law, any procedural matters agreed to by the parties pursuant to a valid contract is binding upon those parties. K.S.A. 19-4303 et seq. do not prohibit individuals from contractually changing their statutory procedural rights. Thus, if the MOU in question provides that particular employees will not go before the civil service board concerning certain types of grievances, those employees

who are party to that agreement are bound by the terms of the MOU. However, this does not necessarily preclude the board from hearing matters not contained in the agreement nor does a contract between two parties necessarily bind a third non-party.

K.S.A. 19-4303 et seq. do not prohibit county employees from contractually agreeing to alter statutory procedures that might otherwise be available to them. However, neither contract law nor the applicable statutes allow third parties to contractually divest the board of authority to enforce the act. Thus, the Shawnee County Civil Service Board is not bound by the terms of a contract to which it is not a party. However, the authority of the board can be contractually altered in that the employees themselves may be bound by their contract. For example, should the board choose to sua sponte investigate a matter that the contract clearly provides shall not be heard by the board, the board could place individuals who are party to that contract in the position of either disobeying orders issued by the board or breaching the terms of their agreement. This potential conflict has apparently been resolved by the Shawnee board of county commissioners pursuant to Shawnee County Charter Resolution No. 77-5. (We are informed that this resolution has not been rescinded and remains in effect.)

Shawnee County Charter Resolution No. 77-5 provides:

"The civil service board shall not set up regulations for those employees who are represented by a recognized employee organization and when there is an existing memorandum of agreement between the employer and such employee organization except under the following conditions:
(1) the regulations pertain to matters not covered by the memorandum of agreement,
(2) the regulations are "the same as" the provisions in the memorandum of agreement.

. . . .

"The provisions of the act shall not apply to employees who are represented by a recognized employee organization if such provisions are in conflict with matters covered by a memorandum of agreement

between the employer and such employee organization."

This resolution clearly alters the jurisdiction of the civil service board to adopt regulations or hear certain matters concerning certain employees. Thus, the remaining issue becomes whether a county home rule resolution may preempt or alter the jurisdiction otherwise enjoyed by a civil service board created pursuant to K.S.A. 19-4303 et seq.

K.S.A. 19-101a confers home rule authority upon Kansas counties subject to certain enumerated exceptions. K.S.A. 19-101(2) through (22) preclude county action on specific matters or statutes. These exceptions do not appear applicable to K.S.A. 19-4303 et seq. However, K.S.A. 19-101a(1) limits the exercise of county home rule authority when state legislation is uniformly applicable to all counties.

K.S.A. 19-4303 establishes which counties shall be subject to the act and which counties may elect to be subject:

"Any county designated as an urban area county by the legislature pursuant to the provisions of section 17 of article 2 of the constitution of the state of Kansas and any county having a population of more than three hundred thousand (300,000) and any county having a population of more than sixty-five thousand (65,000) and less than one hundred eighty thousand (180,000) shall be subject to the provisions of this act. Any county having a population of more than forty-five thousand (45,000) and less than one hundred thousand (100,000) and in which there is located an active military establishment may be subject to the provisions of this act upon the adoption of a resolution by the board of county commissioners of such county, electing to be subject to the provisions of this act." K.S.A. 19-4303.

"The legislature may reserve exclusive jurisdiction to regulate in a particular area when an intent is clearly manifested by state law to preempt a particular field by uniform laws made applicable throughout the state." Missouri Pacific Railroad v. Board of Greeley County Commissioners, 231 Kan. 225 (1982) (emphasis added). See

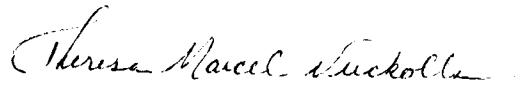
e.g. K.S.A. 19-101a(20). (While K.S.A. 19-211 might otherwise be non-uniform, K.S.A. 19-101a(20) clearly manifests an intent that the law be applicable throughout the state). In addition, counties may use home rule authority only when a subject is purely a matter of local county business. See Attorney General Opinion No. 81-112.

K.S.A. 19-4303 et seq. establish a procedure and methodology for dealing with certain employees of the county sheriffs department in larger counties. K.S.A. 19-4303 et seq. do not apply to all counties nor is the subject matter of these statutes one that impacts upon persons or territory outside a particular county. Thus, it is our opinion that because it is non-uniform and a matter of a local county business a county subject to K.S.A. 19-4303 et seq. may exercise its home rule authority to alter or exempt itself from the provisions of the act.

In conclusion, it is our opinion that, while generally a county civil service board organized pursuant to K.S.A. 19-4303 et seq. has jurisdiction to hear and investigate certain grievances or complaints involving employees of the sheriff's department, that jurisdiction may be affected or altered by an agreement entered into on behalf of those employees or by the exercise of county home rule authority. Whether jurisdiction over a particular matter or employee has actually been altered by a contract or home rule resolution is a fact question which should be determined on a case by case basis.

Very truly yours,


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