



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN  
ATTORNEY GENERAL

November 28, 1990

MAIN PHONE: (913) 296-2215  
CONSUMER PROTECTION: 296-3751  
TELECOPIER: 296-6296

ATTORNEY GENERAL OPINION NO. 90- 131

Robert A. Anderson  
Workers Compensation Director  
Kansas Department of Human Resources  
600 Merchants Bank Tower  
800 S.W. Jackson  
Topeka, Kansas 66612-1227

Re: Labor and Industries--Workers Compensation--Medical  
Compensation; Powers; Advisory Panel Members

Synopsis: Members of the workers compensation advisory panel,  
that approves maximum medical fee schedules, can be  
represented by substitutes who can cast binding  
votes at meetings. Cited herein: K.S.A. 40-110;  
K.S.A. 1989 Supp. 44-510, as amended by L. 1990,  
ch. 183, sec. 2; K.S.A. 75-3223.

\* \* \*

Dear Mr. Anderson:

As director of the division of workers compensation, Kansas  
department of human resources, you inquire whether an advisory  
panel member can be represented by another person at meetings  
and if so, whether the "representative" can cast a binding  
vote during a meeting where a call roll vote is taken.

You indicate that 1990 Substitute for House Bill No. 3069  
created the advisory panel to assist the director of the  
division of workers compensation in establishing schedules for  
maximum fees, amending K.S.A. 1989 Supp. 44-510 (L. 1990,  
ch. 183, sec. 2). The relevant subsection (a) (3) (B)  
states:

"There is hereby created an advisory panel to assist the director in establishing schedules of maximum fees as required by this section. The panel shall consist of the commissioner of insurance and seven members appointed as follows: (i) One person shall be appointed by the Kansas medical society; (ii) one member shall be appointed by the Kansas association of osteopathic medicine; (iii) one member shall be appointed by the Kansas hospital association, (iv) one member shall be appointed by the Kansas chiropractic association, and (v) three members appointed by the secretary. One member appointed by the secretary shall be a representative of employers recommended to the secretary by the Kansas chamber of commerce and industry. One member appointed by the secretary shall be a representative of employees recommended to the the secretary by the Kansas AFL-CIO. One member appointed by the secretary shall be a representative of entities providing vocational rehabilitation services pursuant to K.S.A. 1989 Supp. 44-510g and amendments thereto. Each appointed member shall be appointed for a term of office of two years which shall commence on July 1 of the year of appointment."

This legislation establishes an eight member board; it imposes a new duty on the commissioner of insurance and delegates to the secretary of the department of human resources and to various organizations the power to make appointments to office. The issues presented by your first inquiry are first, whether the insurance commissioner is authorized to delegate his new duty to one of his subordinates and second, whether the secretary and various organizations empowered to make appointments are authorized to designate a substitute in the event of an appointee's absence. The advisory panel is a creature of statute; as such its powers or authority must be resolved by a perusal of the statute to determine whether the authority in question is incidental.

The statute sets out the nature and function of the advisory panel. The members of the panel are: appointed to office for

a two year term [subsection (a)(3)(B)]; to meet annually [subsection (a)(3)(c)]; and to be paid subsistence allowances, mileage and other expenses as provided by K.S.A. 75-3223 and amendments [subsection (a)(3)(D)]. In reviewing and approving the schedules of maximum fees, the panel must consider specific guidelines within the expertise and experiences of the appointees from the organizations represented [subsection (a)(3)(C)]. See generally 1990 Minutes of the Senate Committee on Labor, Industry and Small Business, April 2, 1990.

It is clear from this perusal of the statute that the advisory panel is an administrative body see 1 Am.Jur.2d Administrative Law § 50 (1962) created pursuant to statute and that its members are public officers who exercise some portion of the sovereign power of the state when they approve maximum fee schedules. See 63A Am.Jur.2d Public Officer and Employees §§ 9, 12 (1984). Unlike other administrative bodies that exercise quasi-judicial functions requiring impartiality, this body's function requires a direct interest or prejudice because each member represents a specific public interest. As public officers their duties include not only those essential to their purpose but also those incidental and collateral that serve to promote that purpose. 63A Am.Jur.2d Public Officers and Employees § 303 (1984). In our opinion the authority to designate a qualified substitute or representative is incidental to and serves to promote the purpose of the statute.

With the exception of the insurance commissioner, the legislature chose to delegate the appointment of these officers to the secretary and various organizations. See 63A Am.Jur.2d Public Officers and Employees § 96 (1984). We can presume from this delegation a rational and substantial relationship between the organizations represented and the law to be administered. See Minutes of the Senate Committee on Labor, Industry and Small Business, April 2, 1990. In this respect those empowered to appoint the advisory panel members render a material service by appointment of those qualified by interest, experience and background to effect the statutory purpose. See generally, 97 A.L.R.2d 361, sec. 3(b).

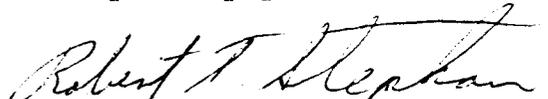
Thus, in our judgment those empowered to appoint the advisory panel also have the incidental power to appoint a substitute so long as the delegated authority to appoint is exercised using the safeguards that made the original appointment reasonable by considering the purpose and aim of the statute. See generally 63A Am.Jur.2d Public Officers and

Robert A. Anderson  
Page 4

Employees § 98 (1984). The same analysis applies to the commissioner of insurance who in addition to the incidental power described above, is empowered by statute, K.S.A. 40-110, to delegate his duties to subordinates.

In conclusion it is our opinion that the advisory panel members can be represented by substitutes who may cast binding votes at meetings.

Very truly yours,

  
ROBERT T. STEPHAN  
Attorney General of Kansas

  
Guen Easley  
Assistant Attorney General

RTS:JLM:GE:jm