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ATTORNEY GENERAL OPINION NO. 91- 109

Jean C. Hunter
Chairman, Board of Trustees
Johnson County Community College
12345 College at Quivira
Overland Park, Kansas 66210-1299

Re: Schools-Community Colleges--Organization, Powers
and Finances of Boards of Trustees--Boards of
Trustees; Powers and Duties; Contracts; Delegation
of Ministerial Function

Synopsis: Under the procedures utilized by the board of
trustees for Johnson county community college for
entering into contracts, the signing of the
contract is a ministerial function that may be
delegated to an administrative official of the
community college. Cited herein: K.S.A. 1990
Supp. 71-201, as amended by L. 1991, ch. 213, §
1, K.S.A. 1990 Supp. 71-501; 72-4424.

* * *

Dear Ms. Hunter:

As chairman of the board of trustees for Johnson county
community college, you request our opinion regarding the
legality of the procedure utilized by the board for entering
into contracts. Specifically, you ask whether the board may
lawfully delegate to administrative personnel the authority to
sign purchase orders and contracts on behalf of the community
college.

The board of trustees has developed procedures for entering into contracts. The procedure to be followed is determined by the subject matter and the value of the contract. All of the procedures basically require that a request regarding each contract be submitted to the board for its review. Typically, those requests which receive board approval are attached to the minutes of the meetings of the board. The designated administrative official is then directed by the board to execute the contract on its behalf. The board has implemented these procedures to assist it in effectively processing the large number of contracts required to operate the community college.

A municipal corporation is defined in part as:

"A body corporate consisting of the inhabitants of a designated area created by the legislature with or without the consent of such inhabitants for governmental purposes, possessing local legislative and administrative power, also power to exercise within such area so much of the administrative power of the state as may be delegated to it and possessing limited capacity to own and hold property and to act in purveyance of public conveniences."
Deluxe Black's Law Dictionary 1017 (1990).

Pursuant to K.S.A. 1990 Supp. 71-201, as amended by L. 1991, ch. 213, § 1, the board of trustees of a community college has the power: to sue and be sued; to enter into contracts; to acquire, own, lease, use and operate property which is necessary or desirable for community college purposes; to exercise the right of eminent domain; and to issue and sell general obligation bonds. The board also possesses limited authority to levy taxes. See K.S.A. 1990 Supp. 71-501; 72-4424. A school district possessing similar powers has been determined to be a municipal corporation. Brickell v. Board of Education, 211 Kan. 905, 917 (1973). Likewise, the community college constitutes a municipal corporation.

The ability of a municipal corporation to delegate to administrative personnel a particular function of a municipal corporation is subject to whether the function is a legislative function or a ministerial or administrative function.

"Unless a statute specifically provides otherwise, legislative and discretionary powers vested in the governing body of a municipality cannot be delegated by such body to the administrative officials of the municipality. Thus, when the exercise of discretion is involved, a municipal council cannot delegate the power . . . of entering into contracts generally. . . .

"These principles, however, are not to be so construed as to deprive a municipal council of the power of delegating ministerial or administrative functions to subordinate officials. The fact that such power is vested in the municipal legislature does not mean that it is itself required to act in every case. . . . Again, the council or other governing body may authorize others to do those things which it may properly, but cannot understandingly or advantageously, do itself. . . ." 56 Am.Jur.2d Municipal Corporations, Counties, and Other Political Subdivisions, § 196, 251-52 (1971). (Emphasis added.)

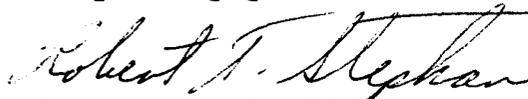
No statute expressly authorizes the delegation to administrative officials of the community college the authority to sign contracts. Therefore, it is necessary to determine whether such function is a legislative function or a ministerial function of the board.

An act is ministerial if it is one which a person is required to perform based upon a given set of facts in obedience to the mandate of legal authority and without regard to his own judgment or opinion about the propriety of the act to be performed. State ex rel. Stephan v. Kansas Racing Commission, 246 Kan. 708, 717 (1990). A ministerial function is "[a] function as to which there is no occasion to use judgment or discretion." Deluxe Black's Law Dictionary 996 (1990).

Pursuant to the procedures adopted by the board of trustees for Johnson county community college, the board reviews the requests and determines which contracts to accept. The board then directs the designated administrative official to sign

and execute the contract. The administrative official is not authorized to determine whether a contract should be entered into or whether the terms of a contract are acceptable. Under the procedures utilized by the board of trustees for Johnson county community college for entering into contracts, the signing of the contract is a ministerial function that may be delegated to an administrative official of the community college.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Richard D. Smith
Assistant Attorney General

RTS:JLM:RDS:jm