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February 3, 1992

ATTORNEY GENERAL OPINION NO. 92-15

The Honorable Bob J. Mead
State Representative, 112th District
State Capitol, 174-W
Topeka, Kansas 66612

Re: State Departments, Public Officers and Employees --
Department of Health and Environment; Advisory
Commission on Health and Environment -- Advisory
Commission on Health and Environment Established;
Meetings; Compensation and Expenses

State Departments, Public Officers and Employees --
Compensation and Allowances -- Compensation,
Subsistence, Allowances, Mileage and Expenses of
Member of Board

Synopsis: The use of the word "shall" in a statute which
specifies a set number of meetings per year is
directory not mandatory if that statute does not
provide consequences for non-compliance. Members
of the advisory commission on health and
environment should be compensated with subsistence
allowances, and reimbursement for mileage and other
actual and necessary expenses for attending
commission meetings. Cited herein: K.S.A.
75-3223; 75-5656.

* * *

Dear Representative Mead:

As representative for the 112th district, you ask whether K.S.A. 75-5656(b) is violated if the advisory commission on health and environment holds less than four meetings per year. You also inquire about the appropriate compensation for citizen members when attending commission meetings.

K.S.A. 75-5656 establishes a thirteen member advisory commission on health and environment which is to "consult with and advise the secretary of health and environment on matters relating to the major department policy decisions and future agency direction, the result of study, assessment and evaluation of current actions and local, state, regional and national policy and trends in public health and environment."

Regarding the required number of commission meetings, K.S.A. 75-5656(b) provides:

"[T]he commission shall hold at least four regular meetings each year and any additional meetings as the secretary and chairperson deem desirable, at a place and time to be fixed by the secretary [of health and environment] within the state of Kansas. Special meetings shall be called by the secretary upon written request of any nine members."

Seemingly, K.S.A. 5656(b) would be violated if the advisory commission held less than four meetings per year. However, since the statute does not provide any consequences for non-compliance, the use of the word "shall" in K.S.A. 75-5656(b) must be taken to be directive and not mandatory. White v. Vinzant, 13 Kan.App.2d 474 (1989); Paul v. City of Manhattan, 212 Kan. 381 (1973). Accordingly, while it is preferable that the commission meet at least four times per year, we cannot say K.S.A. 75-5656(b) is violated if fewer meetings are held.

Your second question relates to the proper compensation to be paid to commission members when attending commission meetings. You ask whether citizen members of the commission should be paid the per diem compensation of thirty-five dollars (\$35) as provided in K.S.A. 75-3223(a) as well as the subsistence allowances, and the mileage and other expenses reimbursement authorized by K.S.A. 75-3223(e).

Compensation for members of the advisory commission on health and environment is established by K.S.A. 75-5656(c) which provides:

"[T]he members of the advisory commission attending commission meetings shall be paid amounts as provided in subsection (e) of K.S.A. 75-3223, and amendments thereto."

Subsection (e) of K.S.A. 75-3223 does not incorporate the per diem compensation established in subsection (a), but rather provides:

"Whenever it is provided by law that members of a board shall receive amounts provided for in [this] subsection (e) of K.S.A. 75-3223 and amendments thereto, such members shall receive subsistence allowances as provided in K.S.A. 75-3207 and amendments thereto, mileage at the rate prescribed under K.S.A. 75-3203a and amendments thereto and other actual and necessary expenses incurred in performing his or her statutory duties as such member in accordance with K.S.A. 75-3203 and amendments thereto and rules and regulations of the secretary of administration adopted under K.S.A. 75-3207, unless such member is a legislator in which case such legislator shall receive the compensation, subsistence allowances, mileage and other expenses subsections (a), (b), (c) and (d) of this section." (Emphasis added).

We note that K.S.A. 75-3223(e) does not distinguish between the compensatory reimbursement due a citizen member and that due other members; distinction is made only in relation to legislators who may be members of a particular board.

In conclusion, since the amount of compensation due to members of the advisory commission on health and environment is statutorily specified in K.S.A. 75-5656(c) as "amounts as provided in subsection (e) of K.S.A. 75-3223," we opine that

members of the commission are not also due the per diem provided for in subsection (a) of K.S.A. 75-3223.

Very truly yours,



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