



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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

ROBERT T. STEPHAN  
ATTORNEY GENERAL

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

ATTORNEY GENERAL OPINION NO. 92- 18

The Honorable Anthony Hensley  
State Representative, 58th District  
2226 SE Virginia  
Topeka, Kansas 66605

Re: Constitution of the State of Kansas -- Public  
Institutions and Welfare -- Aged and Infirm  
Persons; Financial Aid; State and County  
Participation

Synopsis: Article 7, section 4 of the Kansas constitution,  
standing alone, does not impose a mandatory duty on  
the counties or the state to provide assistance to  
Kansans who because of age, infirmity, or other  
misfortune cannot meet their own needs. It does,  
however, require the legislature to enact statutes  
which enable the counties to provide assistance.  
Once the legislature has enacted these statutes,  
the county has a duty to provide the prescribed  
assistance. Cited herein: Kan. Const., Art.  
7, § 4.

\* \* \*

Dear Representative Hensley:

As representative of the 58th district you request our  
opinion as to whether article 7, section 4 of the Kansas  
constitution imposes a duty, either on the state or the  
counties, to provide assistance to those Kansas citizens who  
because of age, infirmity, or other misfortune cannot meet  
their own needs.

Article 7, section 4 reads as follows:

"The respective counties of the state shall provide, [as may be prescribed by law,] for those inhabitants who, by reason of age, infirmity or other misfortune, may have claims upon the aid of society. The state may participate financially in such aid and supervise and control the administration thereof."  
(Emphasis added).

The original purpose of this act was to provide assistance to those who were deemed to be destitute. State v. Township of Osawkee, 14 Kan. 322 (1875). Later this section was examined and the Kansas court held that "the constitution of this state gives utterance to the universal voice of sympathy. . . . It gives voice to a universally recognized state duty, to be discharged in the interest of the public welfare. Care of the pauper is simply a part of the social burden." Treadwell v. Beebe, 107 Kan. 31 (1920); Beck v. Shawnee County, 105 Kan. 325 (1919). The court also stated that "the care of those requiring aid and dispensing of funds for their benefit is a part of the county's ordinary business. . . ." Rishel v. McPherson County, 122 Kan. 741 (1927).

However, the provision of the constitution, standing by itself does not mandate a duty on the counties to provide relief to the aged or infirm. It "requires counties to furnish certain relief to the poor, as provided by law, and thereby imposes a duty upon the legislature to enact statutes enabling the county to perform that duty." State ex rel. v. Robb, 143 Kan. 527 (1936). Therefore, the legislature has a duty to enact statutes that enable and authorize the county to provide assistance to certain individuals. Once the legislature has enacted such statutes then it is the duty of the county to provide the prescribed assistance.

The constitution states that the state "may participate financially in such aid and supervise and control the administration thereof." (Emphasis added).

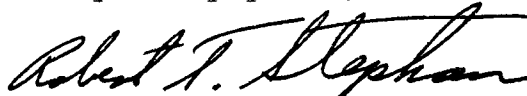
"Primarily and as ordinarily used in a statute, the word 'may' is permissive rather than peremptory. It is sometimes regarded as synonymous with 'must,' as, for instance, 'where public authorities

are authorized to perform an act for the benefit of the public or for an individual who has a right to its performance.' (Phelps v. Lodge, 60 Kan. 122, 124.) It should be given its ordinary meaning, however, unless the terms and provisions of the statute compel the other view. As was said in In re McCort, Petitioner, 52 Kan. 18, 'the sense in which the word is used must always be determined from the context of the act.'" Bradley v. Cleaver, 150 Kan. 699 (1939).

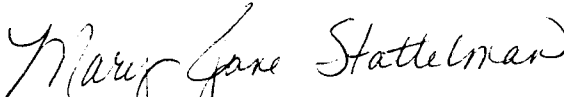
Based on the language in this section of the Kansas constitution, we determine that the word "may" is not mandatory, but is permissive and therefore, the state is not under a constitutional duty to provide assistance to people who because of their age, infirmity or other misfortune cannot otherwise meet their needs.

In conclusion, although article 7, section 4 of the Kansas constitution does not on its own impose a duty on the counties or the state to provide assistance to people who cannot meet their own needs, there is a duty on the legislature to enact statutes which enable to provide assistance. Then once the legislature has enacted these statutes, the county has a duty to provide the prescribed assistance.

Very truly yours,



ROBERT T. STEPHAN  
ATTORNEY GENERAL OF KANSAS



Mary Jane Stattelmann  
Assistant Attorney General

RTS:JLM:MJS:bas