



STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

May 28, 1975

Opinion No. 75- 235

Mr. Don Vsetecka
Finney County Attorney
Finney County Courthouse
Garden City, Kansas 67846

Dear Mr. Vsetecka:

Pursuant to your earlier inquiry, and our opinion no. 75-204, you inquire further whether the Register of Deeds, who employs one person duly authorized to act as a deputy pursuant to K.S.A. 19-1202, may appoint a second employee in the office to act also as a deputy.

K.S.A. 19-1202 provides thus:

"The register of deeds may appoint a deputy, who shall hold his office during the pleasure of the register. Such appointment shall be in writing, filed and recorded in the office of said register; and the register so appointing him, and his sureties, shall be responsible for the faithful performance of his duties by such deputy."

In our earlier opinion, we suggested that authority to appoint an additional deputy could be furnished by an ordinary resolution adopted by the board of county commissioners. You inquire whether such authorization is really necessary. The statute is fairly explicit in its authorization of the appointment of "a" deputy. As indicated earlier, this reference to *a* deputy contrasts somewhat with statutes respecting several county officers which expressly authorize several deputies.

The general rule of *expressio unius est exclusio alterius* seems applicable here. As stated in *LeSueur v. LeSueur*, 197 Kan. 495, 419 P.2d 817 (1966):

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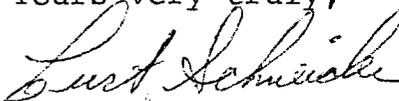
"The direct mention of this discretionary authority implies exclusion of any other implied authority. The general rule is thus stated in 82 C.J.S., *Statutes*, § 333, p. 668:

'Under the general rule of express mention and implied exclusion, the express mention of one matter excludes other similar matters not mentioned; every positive direction in a statute contains an implication against everything contrary to it; the specification of one particular class excludes all other classes; and an affirmative description of powers granted implies a denial of non-described powers.'" 197 Kan. at 500.

Thus, the grant of express power to employ one deputy implies an exclusion of authority to appoint additional authorities.

In view of the obvious vulnerability of an appointment of an additional deputy, even by way of appointment of an existing employee, and the questions which might arise in the future concerning the authority of such a deputy, we cannot fairly advise that the Register of Deeds proceed to appoint an additional deputy without express authority for doing so. The fact that the appointment of a present employee would not alter the salary, or otherwise require approval by the board of county commissioners, does not alter the possible attack upon the authority of the deputy so appointed in some future dispute. Out of an abundance of caution, we feel constrained to suggest and conclude that some express authority should be provided for the appointment of an additional deputy.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj