



STATE OF KANSAS

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December 11, 1979

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ATTORNEY GENERAL OPINION NO. 79-281

Mr. Dan E. Turner
City Attorney
City Building
215 East Seventh Street
Topeka, Kansas 66603

Re: Cities of the First Class--Board of Commissioners--
Organization of Departments

Synopsis: The board of commissioners of a city of the first class has authority to reorganize its police and fire departments into a single Department of Public Protection, and to appoint a department head therefor, exempting itself from the provisions of K.S.A. 13-1808 in a charter ordinance for that purpose.

* * *

Dear Mr. Turner:

On your behalf, Deputy City Attorney Richard Jones requested the opinion of this office whether K.S.A. 13-1808 precludes the reorganization of the city's police and fire departments into one department, to be called the Department of Public Protection. Mr. Jones advised that the Mayor has proposed the creation of the Department of Public Protection, which department would be under the direct supervision of the Mayor, "to promote efficiency and economy, and to accomplish increased productivity."

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K.S.A. 13-1808 provides, in pertinent part:

"The mayor shall be ex officio, the 'commissioner of the police and fire departments,' and shall have under his or her special charge, and be responsible for, the enforcement of all city ordinances and police regulation of such city, and have general supervision over the police and fire departments.

. . . .

"Said board of commissioners so constituted shall have control and supervision over all the departments of such city and to that end shall have power to make and enforce such rules and regulations as they may see fit and proper for and concerning the organization, management and operation of all the departments of such city, and whatever agencies may be created for the administration of its affairs; and said board may, from time to time, assign such further duties to each of said commissioners as shall be for the best interests of such city." (Emphasis added.)

Mr. Jones indicated that it is his opinion that, although the first paragraph of the above-quoted statute refers to the Mayor's supervision over the police and fire departments as separate departments, such references are merely generic, and that the statute does not require separate departments. In support of that contention, he noted the language of the last paragraph of the statute (quoted above) which vests the board of commissioners with broad discretion in matters of organization, management and operation of city departments. Moreover, the statute contemplates the creation of new agencies as may be deemed necessary for the administration of city affairs.

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We agree that the governing body may reorganize its police and fire departments into a single department of public protection, but it is our opinion that such reorganization may only be accomplished by charter ordinance, pursuant to Article 12, Section 5 of the Kansas Constitution. K.S.A. 13-1808 is not part of an enactment uniformly applicable to all cities. Thus, the city may adopt a charter ordinance which exempts the city from the whole or any part of an enactment of the legislature and which may provide substitute and additional provisions on the subject. Kan. Const., Art. 12, §5(c).

We disagree that a simple or ordinary ordinance is sufficient to accomplish such reorganization. The first paragraph of the statute in question expressly refers to the performance of police and fire functions in separate and distinct departments. It is important to note that, except for the reference to police and fire departments, and a reference to the "engineering department" in the fourth paragraph of the statute, the legislature defined the functions and duties of each of the commissioners in general terms, i.e., without mention of specific departments. In our judgment, that the legislature chose to do so in the first and fourth paragraphs, in express reference to police, fire, and engineering departments, those references have special significance and indicate the legislature's intent that these functions be performed accordingly, i.e., in separate departments.

Moreover, while we agree that the last paragraph of the statute in question (quoted above) confers broad authority on the board of commissioners with respect to management of the city's affairs, we cannot agree that it authorizes the governing body to abolish existing departments for reorganization into one department. This portion of the statute empowers the board "to make and enforce such rules and regulations as they may see fit and proper for and concerning the organization, management and operation of all the departments of such city" (Emphasis added.) Authority to make rules and regulations for operation and management of existing departments is not authority to restructure or reorganize those departments, especially those departments specifically designated by law to perform certain functions.

Unquestionably, with the passage of the home rule amendment, cities are empowered to determine their local affairs and government as they deem most appropriate, but the exercise of that power is subject to certain limitations. Article 12, Section 5(b) of the Kansas Constitution provides, in pertinent part, thus:

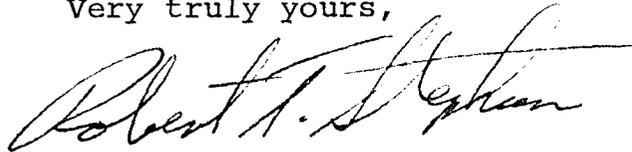
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"All enactments relating to cities now in effect or hereafter enacted and as later amended and until repealed shall govern cities except as cities shall exempt themselves by charter ordinances as herein provided for in subsection (c)."

Accordingly, we conclude that the city may reorganize its police and fire departments by establishment of a single department of public protection, but may only do so by charter ordinance exempting the city from the provisions of K.S.A. 13-1808, and/or adding or substituting provisions therefor. Of course, once the new department is established by charter ordinance, the city may adopt a simple ordinance or ordinances as may be necessary to establish rules and regulations for the new department, as K.S.A. 13-1808 expressly provides.

Mr. Jones also inquired whether, upon the recommendation of the Mayor, the board of commissioners may appoint a department head for a new Department of Public Protection. He advised that the city's Charter Ordinance No. 22 establishes the procedure for appointment of department heads. The second question is merely a corollary of the first, and we submit that we have already answered the second inquiry in our response to the first. If the city's governing body has authority to establish a new department, it necessarily follows that it has the authority to appoint, or approve the Mayor's appointment of, someone to head the new department. The board of commissioners may find it appropriate to do so by additional provision or provisions in the charter ordinance establishing the new department for that purpose.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Steven Carr
Assistant Attorney General

RTS:WRA:SC:gk