



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

April 7, 1980

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
ANTITRUST: 296-5299

ATTORNEY GENERAL OPINION NO. 80- 85

The Honorable Patrick B. Augustine
State Representative, 110th District
273-W, State Capitol
Topeka, Kansas 66612

Re: Elections--Registration of Voters--
Appointment of Deputy County Election
Officials

Synopsis: A county clerk whose duties include those of the county election officer may, pursuant to K.S.A. 25-2303, appoint a full-time deputy county election officer who may perform the responsibilities of the county election officer in the event of the absence or incapacity of such officer. Cited herein: K.S.A. 19-3419 et seq., and 25-2303.

* * *

Dear Representative Augustine:

On behalf of the county clerk of Ellis County, you have requested the advice of this office regarding the scope of his appointive powers as county election officer. The issues upon which you desire clarification are as follows: (1) Does the county clerk have the authority to appoint a full-time deputy county election officer from his existing staff; and (2) if so, can this deputy perform the duties of the county election officer in the latter's absence?

We believe the above questions are answered by K.S.A. 25-2303, which provides for the appointment of deputy county election officers by the county election officer. In the case of all but the largest four counties in the state (see K.S.A. 19-3419 et seq.), this latter position is filled by the county clerk. As indicated above, it is such an official who is involved in this inquiry.

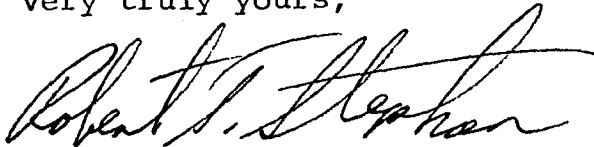
The Honorable Patrick B. Augustine
Page Two
April 7, 1980

K.S.A. 25-2303, in addition to making the county clerk responsible for administering county election procedures, also empowers that official to appoint deputy county election officers. No limit is placed on the number which may be appointed, as the statute merely states that the county election officer (i.e., the county clerk) appoint such deputies as he or she may "deem appropriate." Deputy election officers' duties are but loosely defined by statute, as K.S.A. 25-2303 simply states that they "shall maintain records and perform duties under the provisions of this act only in the manner prescribed by the county election officer." K.S.A. 25-2303.

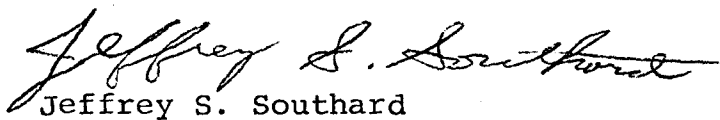
In our opinion, the language of K.S.A. 25-2303 acts as a grant of power to the county election officer to assign such statutorily-authorized duties to a deputy as the former may specify. This includes the authority to perform the election officer's duties in the event of his or her incapacity or absence. Nothing in any of the above statutes or in the rest of the article appears to proscribe such delegation, although the exercise of this power by the county election officer must be reasonable, i.e., he or she could not assign away all duties and then take a vacation every time an election occurred. See, e.g., Moore v. Wilson, 84 Kan. 745 (1911). Additionally, the duties so delegated must be ones which the election officer himself has, since one cannot grant greater authority than is initially possessed. Likewise, as the statutes merely require that the appointment be deemed "appropriate" by the county election officer, there is no prohibition on the deputy being a full-time employee selected from the clerk's existing staff.

In conclusion, a county clerk whose duties include those of the county election officer may, pursuant to K.S.A. 25-2303, appoint a full-time deputy county election officer who may perform the responsibilities of the county election officer in the event of the absence or incapacity of such officer.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Jeffrey S. Southard
Assistant Attorney General

RTS:BJS:JSS:gk