



STATE OF KANSAS

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April 8, 1980

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ATTORNEY GENERAL OPINION NO. 80- 86

Mr. John E. Bremer
Decatur County Attorney
Office of the County Attorney
Decatur County Courthouse
Oberlin, Kansas 66749

Re: Holidays and Days of Commemoration--Legal
Holidays--Observance of Holidays

Synopsis: Absent a statute prescribing the nature of observance of legal public holidays, a board of county commissioners is authorized to make its own determination as to how holidays shall be observed in the county, and to decide which holidays may be enjoyed as vacation days by county employees as the board deems most appropriate, in the exercise of the board's general authority under K.S.A. 1979 Supp. 19-101a and its specific authority to fix the days and hours county offices are required to remain open under K.S.A. 1979 Supp. 19-2601. Cited herein: K.S.A. 1979 Supp. 19-101a, 19-2601, and 35-107; K.A.R. 1979 Supp. 1-9-2.

* * *

Dear Mr. Bremer:

You have asked several questions as to the meaning and effect of K.S.A. 1979 Supp. 35-107, which statute declares ten days of the year to be legal public holidays, and further declares that those days "are to be observed as such." Subsection (b) of the statute states that any reference in the laws of the state of Kansas to the observance of legal holidays refers to the designated legal public holidays set forth in subsection (a). Due to some confusion over variation in the

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observance of holidays by county offices and state offices in the courthouse, you have asked for our opinion on four related questions.

First, you inquire whether there are any statutes within the contemplation of subsection (b) of the statute in question which apply to county government or to individual agencies or divisions of county government. We are aware of no such statutes. It is important to note, however, that K.S.A. 1979 Supp. 19-2601 empowers the board of county commissioners to fix the days and hours county offices shall be required to remain open. In our judgment, as will be elaborated in the discussion to follow, this statute empowers the board of county commissioners to fix the days during which county offices may be closed for observance of legal holidays, because there are no applicable state laws which so provide.

In response to your second and third questions, though the statute in question declares that the designated holidays "are to be observed as such," the statute unfortunately affords no clue as to what an appropriate observance is. The dictionary defines "observe," in relation to holidays, as "to celebrate or keep . . . according to custom," suggesting the "respectful marking of a day or occasion in the prescribed or appropriate manner." Webster's New World Dictionary (College Edition, 1966), p. 235, 1013. We are aware of no provision in Kansas law whereby the legislature has prescribed an appropriate observance or celebration of the holidays designated in K.S.A. 1979 Supp. 35-107 for the state, county, or other units of government.

Notably, pursuant to state administrative rules and regulations, certain of the holidays designated under K.S.A. 1979 Supp. 35-107 are observed by the State of Kansas by permitting state employees to be excused from work on such days with pay. K.A.R. 1979 Supp. 1-9-2 provides, in pertinent part:

"(a) The following days are legal holidays for the state service: New Year's day, Memorial day, Independence day, Labor day, Veteran's day, Thanksgiving day, and Christmas day. When one of these legal holidays falls on a Saturday, the preceding Friday shall be the officially observed holiday for state employees. When one of these legal holidays falls on a Sunday, the following Monday shall be the officially observed holiday for state employees."

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Note that Lincoln's Birthday, Washington's Birthday, and Columbus Day are not included in the above list, all of which are designated as legal public holidays under the statute in question.

Finally, you inquire whether the granting of paid vacation in honor of a designated legal public holiday must necessarily coincide with the date established under subsection (a) of the statute in question for observance of such holiday. In our judgment, there is no such legal requirement. As noted above, the state's own regulations pertaining to paid legal holidays enjoyed by state employees vary the dates of observance when holidays fall on a Saturday or a Sunday. In our opinion, the board of county commissioners is free to fix those days which shall be observed as holidays by permitting county employees to enjoy days off from work as it deems most appropriate under the aforementioned statute, K.S.A. 1979 Supp. 19-2601, and under its general home rule powers granted to counties under K.S.A. 1979 Supp. 19-101a.

Moreover, in Canaday v. Scott County, 104 Kan. 785 (1919), plaintiffs contended that action taken by the defendant board of county commissioners was void because the board had taken the action in question on a legal holiday, Labor Day. The Kansas Supreme Court disagreed, and wrote, in pertinent part:

"The designation by statute of a day as a legal holiday does not invalidate official or judicial acts performed on that day, unless the statute expressly or by clear implication prohibits the performance of those acts. . . . The statute making the first Monday in September a legal holiday neither expressly nor impliedly prohibits any court or officer from acting on that day." (Citations omitted.) Id. at 787.

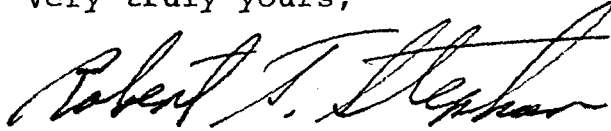
Accord: Smith v. Robertson, 155 Kan. 706 (1942); 40 C.J.S., Holidays, §§3, 6.

In view of all of the foregoing authorities, it is our opinion that, absent a statute prescribing the nature of observance of legal public holidays, a board of county commissioners is authorized to make its own determination as to how holidays shall be observed in the county, and to decide which holidays

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may be enjoyed as vacation days by county employees as the board deems most appropriate, in the exercise of the board's general authority under K.S.A. 1979 Supp. 19-101a and its specific authority to fix the days and hours county offices are required to remain open under K.S.A. 1979 Supp. 19-2601.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Robert T. Stephan".

ROBERT T. STEPHAN
Attorney General of Kansas

A handwritten signature in cursive script, appearing to read "Steven Carr".

Steven Carr
Assistant Attorney General

RTS:WRA:SC:gk