



STATE OF KANSAS

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May 14, 1981

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ATTORNEY GENERAL OPINION NO. 81- 110

The Honorable Ben Vidricksen
State Senator, Twenty-Fourth District
713 North 11th Street
Salina, Kansas 67401

Re: Jurors -- Exclusions From Service -- Volunteer
Fireman May Be Excused by Discretion of Court

Synopsis: While no statute exists exempting firemen, whether regular or volunteer, from jury duty, a court may, in its discretion, excuse persons holding either position from such service, pursuant to K.S.A. 43-159, as they are persons whose presence elsewhere could be required for the public safety and welfare. Cited herein: K.S.A. 43-159, 48-211, 48-512.

* * *

Dear Senator Vidricksen:

On behalf of certain constituents of your district, you request the opinion of this office concerning the service of firemen on juries. Specifically, you wish to know whether volunteer firemen are exempt from such duty, or, alternatively, whether they may be excused from serving once they are called for jury service.

Initially, we would note that Kansas does not exempt firemen, whether regular or volunteer, from jury service. This may be contrasted with the status given members of the National Guard (K.S.A. 48-211) or the state militia (K.S.A. 48-512), who have been specifically exempted from service by the legislature. Additionally, other states have provided such exemption (50 C.J.S. Juries §153), and it has been recognized that a state is constitutionally free to exempt from such duty those engaged in particular occupations, the uninterrupted performance of which is critical to the public welfare. Taylor v. Louisiana, 419 U.S. 522, 95 S.Ct. 692, 42 L.Ed.2d 690 (1975).

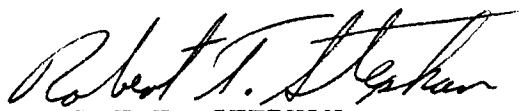
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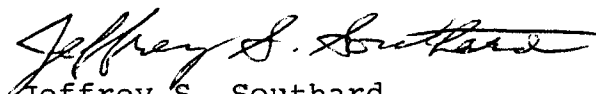
At present, however, Kansas law stops short of giving firemen such an automatic exemption. Rather, under the terms of K.S.A. 43-159(c), "persons whose presence elsewhere is required for the public welfare, health or safety" may be excused from service by the court. While such a group could well be interpreted by a judge to include firemen, the fact remains that under the present statutory procedure it is left to the discretion of the court in determining whether to excuse a potential juror who is also a fireman. See, e.g., State v. Mahkuk, 220 Kan. 74 (1976), where the court noted that while no specific exemption existed for law enforcement officers, a court could excuse them pursuant to K.S.A. 43-159(c).

Finally, it is our opinion that, when taken by itself, the fact that the fireman in question is a volunteer, as opposed to a full-time professional, is irrelevant. In determining whether such a person's presence would be required elsewhere, a court probably would look to factors such as the size of the department, whether the individual would be on call during the course of the trial (and, if so, the availability of a substitute fireman), and the likelihood that his or her services would be required during that time, i.e., near a summer holiday or during dry weather conditions. Insofar as these factors would indicate that the presence of a particular volunteer would be unneeded elsewhere, the court might reach a different result than if a regular fireman were involved. More than this, however, we cannot say, as the determination in each case will be made on the basis of the particular facts involved.

In conclusion, while no statute exists exempting firemen, whether regular or volunteer, from jury duty, a court may, in its discretion, excuse persons holding either position from such service, pursuant to K.S.A. 43-159, as they are persons whose presence elsewhere could be required for the public safety and welfare.

Very truly yours,


ROBERT T. STEPHAN
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Jeffrey S. Southard
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RTS:BJS:JSS:hle