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June 26, 1981

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ATTORNEY GENERAL OPINION NO. 81- 146

Mr. William H. Pringle
Barton County Attorney
P. O. Box 881
Great Bend, Kansas 67530

Re: Counties and County Officers -- County Commissioner;
Powers and Duties -- Publication of Policies and
Procedures Manual

Synopsis: A Board of County Commissioners may adopt an administrative Personnel Policies and Procedures Manual pursuant to the general authority granted such board by K.S.A. 19-212, Sixth. Such adoption may be made effective without publication of the manual in the official paper. Cited herein: K.S.A. 12-3007, 19-101, fourth, K.S.A. 1980 Supp. 19-101a, K.S.A. 19-103, K.S.A. 19-212, Sixth.

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Dear Mr. Pringle:

You inquire regarding the authority of the Barton County Board of County Commissioners to adopt a Personnel Policies and Procedures Manual. Specifically, you desire to know if the Board may act to accomplish this objective pursuant to K.S.A. 19-212, Sixth or pursuant to K.S.A. 1980 Supp. 19-101a. You state that adoption of this manual pursuant to K.S.A. 1980 Supp. 19-101a carries the express requirement of publication in the official newspaper, so adoption under the authority granted in K.S.A. 19-212, Sixth is preferred.

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Apparently, there is no specific statutory grant of authority to boards of county commissioners to publish a personnel manual. Neither is there a statutory prohibition against such county action. However, boards of county commissioners are given broad grants of authority to conduct the business of the county. The basic powers of the county as a corporation are contained in K.S.A. 19-101, which states in pertinent part as follows:

"That each organized county within this state shall be a body corporate and politic, and as such shall be empowered for the following purposes: . . . fourth, to make all contracts and do all other acts in relation to the property and concerns of the county, necessary to the exercise of its corporate or administrative powers"

Any powers granted to the county as a corporation are to be exercised for the county by the board of county commissioners. See K.S.A. 19-103.

The board of county commissioners is granted certain powers and duties aside from those granted to the county that are to be exercised by the board. Among these are the powers granted by K.S.A. 19-212, Sixth, which states in pertinent part thus:

"The board of county commissioners of each county shall have the power at any meeting:
. . . .

"Sixth. To represent the county and have the care of the county property, and the management of the business and concerns of the county, in all cases where no other provision is made by law."

In addition to these general powers, counties are granted the power of home rule by K.S.A. 1980 Supp. 19-101a, which states in pertinent part thus:

"(a) Counties are hereby empowered to transact all county business and perform such powers of local legislation and administration as they deem appropriate, subject only to the following limitations, restrictions, or prohibitions

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"(b) Counties shall apply the powers of local legislation granted in subsection (a) of this section by resolution of the board of county commissioners. If no statutory authority exists for such local legislation other than that set forth in subsection (a) of this section and the local legislation proposed under the authority of such subsection is not contrary to any act of the legislature, such local legislation shall become effective upon passage of a resolution of the board and publication in the official county newspaper. If the legislation proposed by the board under authority of subsection (a) of this section is contrary to an act of the legislature which is applicable to the particular county but not uniformly applicable to all counties, such legislation shall become effective by passage of a charter resolution in the manner provided in K.S.A. 19-101b."

The home rule power authorized by K.S.A. 1980 Supp. 19-101a is to be used where no "statutory authority exists for such local legislation other than that set forth in subsection (a)." Likewise, the powers authorized in K.S.A. 19-101 and 19-212, Sixth are couched in very broad terms. The result of these extensive grants of power is to enable the board of commissioners to carry out its duty of supervising the business and concerns of the county. The adoption of an administrative policies and procedures manual can only serve to effectuate county supervision of county business, specifically the management of county employees. Thus, such action might properly fall within the purview of the action authorized by any of these statutes.

However, it is our opinion that reliance upon those powers enunciated in K.S.A. 19-101 fourth and 19-212 sixth are particularly appropriate in this instance because the measure to be adopted by the county is administrative in character. These two sections are delegations of authority to administer county business; to handle its day to day affairs.

In contrast, K.S.A. 1980 Supp. 19-101a, grants powers of legislation as well as administration and may be looked to primarily when exercising the general police powers of the county.

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Hence, although we believe any of these sections may be relied upon for the adoption of a county personnel policy manual, the exercise of the general home rule powers of 19-101a is not necessary.

As noted, your inquiry concerns the publication requirement of K.S.A. 1980 Supp. 19-101a. Since we believe the home rule powers of 19-101a need not be relied upon in this instance because the general power of the county commissioners, as authorized by either K.S.A. 19-101 or 19-212, is sufficient for the contemplated action, we must consider the publication requirements imposed upon ordinary resolutions of this type. The general rule regarding municipal ordinances seems analogous here and is expressed in 5 McQuillin Mun. Corp. §15.39 (1969) as:

"Ordinances speak only from the time they go into effect. The common rule in regard to legislation is that it shall take immediate effect unless otherwise provided, and this rule is applicable to ordinances. Thus, where publication is not required and there is no time specified either in the charter or ordinance, the ordinance takes effect from the date of its passage." (Footnotes omitted.)

This view is also found in 56 Am.Jur.2d Municipal Corporations §351 (1971):

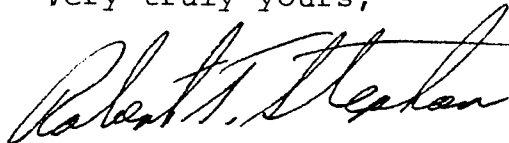
"Where no statutory provision has been enacted or there is no specific provision covering the time of passage, it rests within the power of the legislative body passing an ordinance to fix the time of its taking effect." (Footnote omitted.)

Kansas law imposes no general publication requirements on county resolutions. In contrast, see K.S.A. 12-3007, regarding publication of city ordinances. Publication requirements may be found in certain statutes, such as K.S.A. 1980 Supp. 19-101a, mandating publication for resolutions concerning matters of local legislation. However, such requirements are not universally applicable. Because Kansas law imposes no publication requirements for resolutions passed pursuant to K.S.A. 19-101 and K.S.A. 19-212, the resolution adopting the policies and procedures manual need not be published before taking effect.

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To summarize, a board of county commissioners may adopt an administrative Personnel Policies and Procedures Manual pursuant to the general authority granted such board by K.S.A. 19-212, Sixth. Such adoption may become effective without publication of the manual in the official paper.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Bradley J. Smoot
Deputy Attorney General

RTS:BJS:hle