



STATE OF KANSAS

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May 11, 1983

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ATTORNEY GENERAL OPINION NO. 83- 72

Edward C. Redmon
State Fire Marshal
Mills Building, Suite 203
109 West Ninth
Topeka, Kansas 66612

Re: Fire Protection -- Fire Safety and Prevention --
Certification of Arson Investigators

State Boards, Commissions and Authorities --
Law Enforcement Training Center; Advisory
Commission -- Certification of Arson Investigators.

Synopsis: To become a certified arson investigator and exercise the police powers attendant thereto, an individual must meet the requirements established by rules and regulations of the state fire marshal and successfully complete a firearm training course as prescribed for law enforcement officers under K.S.A. 1982 Supp. 74-5604a. An individual need not complete the basic training course established for law enforcement officers in accordance with K.S.A. 74-5607a in order to be certified as an arson investigator.

An individual employed as an arson investigator prior to July 1, 1982, need not receive certification from the fire marshal to continue such employment; however, such an individual is not empowered by K.S.A. 1982 Supp. 31-157 to carry out the police powers afforded to certified arson investigators. Cited herein: K.S.A. 1982 Supp. 31-157, 74-5601, 74-5604a and 74-5607a.

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Dear Mr. Redmon:

You have requested our opinion concerning two matters. First, you inquire as to whether an individual seeking to become a certified arson investigator, pursuant to K.S.A. 1982 Supp. 31-157, must obtain a certificate confirming the satisfactory completion of 320 hours of basic law enforcement training. Secondly, you inquire as to whether K.S.A. 1982 Supp. 31-157(c) provides the basis for certification of individuals as arson investigators who were employed as arson investigators by a paid fire department before July 1, 1982, without requiring these individuals to comply with applicable statutory and regulatory requirements.

The legislature, by enacting K.S.A. 1982 Supp. 31-157, has authorized the state fire marshal to certify, as arson investigators, members of a paid fire department. To enhance the authority and the effectiveness of these arson investigators the legislature vested in these individuals limited police power, e.g. to effect arrests, carry firearms, conduct searches and seizures in the course of arson or insurance fraud investigations.

K.S.A. 1982 Supp. 31-157 provides:

"(a) The state fire marshal, the state fire marshal's deputies and full-time fire prevention personnel assigned investigation duties who are members of a paid fire department who have been certified by the state fire marshal pursuant to this section shall have the authority to make arrests, carry firearms and conduct searches and seizures while investigating any fire or explosion in which arson or attempted arson is suspected or in which there is an attempt or suspected attempt to defraud an insurance company. Any affidavits necessary to authorize arrests, searches or seizures pursuant to this section shall be made in accordance with K.S.A. 22-2302 and 22-2502, and amendments thereto.

"(b) The state fire marshal, with the assistance of an advisory committee appointed pursuant to K.S.A. 31-135 and amendments thereto, shall adopt rules and regulations and specify the number of investigators for departments or areas and establish standards for certification of members

of fire departments to make arrests, carry firearms and conduct searches and seizures pursuant to this section. No fire department personnel shall be certified to carry firearms under the provisions of this act without having first successfully completed the firearm training course or courses prescribed for law enforcement officers under K.S.A. 74-5604[*], and amendments thereto.

"(c) With the exception of firearms training, nothing in this section shall be construed to require persons employed prior to the effective date of this act to comply with the standards established by the state fire marshal pursuant to this section as a condition of employment, and such persons' failure to comply with such standards shall not make such persons ineligible for any promotional examination for which they are otherwise eligible or affect in any way any pension rights to which they are entitled on the effective date of this act."

"*Section repealed; reference should be to 74-5604a."

Upon examination of K.S.A. 1982 Supp. 31-157, it is clear that the legislature has specifically designated the state fire marshal as the official responsible for certification of arson investigators. In addition, the state fire marshal is authorized to promulgate rules and regulations and establish minimum standards for certification of arson investigators. In K.S.A. 1982 Supp. 31-157(b) the legislature has expressly provided that candidates for certification as arson investigators must complete only one segment of the law enforcement training curriculum, i.e. firearms training.

We presume your inquiry arises from the amendment of K.S.A. 1982 Supp. 74-5602. This section of the Kansas law enforcement training act was amended in 1982 to include reference to "deputies and assistants of the state fire marshal having law enforcement authority" in the definition of "police officer" or "law enforcement officer." Arguably, this change suggests that all such assistants and deputies must receive the training required by the act in order to "receive a permanent appointment as a full-time police officer or law enforcement officer." See K.S.A. 1982 Supp. 74-5607a. However, nothing in the statute governing certified fire investigators (31-157, supra.), suggests that courses in the law enforcement training program were to be required beyond the firearms training courses mentioned in K.S.A. 1982 Supp. 31-157. Moreover, in order that the fire marshal's assistants and

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deputies might enroll in just such firearms courses, the definition of "police officer" or "law enforcement officer" had to be changed since K.S.A. 1982 Supp. 74-5605(a) requires

"[e]very applicant for admission to a course for police officers or law enforcement officers conducted by the training center shall be a police officer or law enforcement officer as defined in subsection (e) of K.S.A. 74-5602 and amendments thereto."

Hence, so that the fire marshal's deputies and assistants might enroll in the firearms course or courses required by K.S.A. 1982 Supp. 31-157, the law enforcement training act was amended. However, we find nothing in the language of 31-157 or other provisions to suggest the legislature intended the arson investigators certified by the fire marshal to otherwise complete the full 320 hours of law enforcement training. Had the legislature intended more than firearms training it might have so provided in simple, clear and unequivocal language.

In construing statutes we are guided by certain established principles as noted in Johnson v. McArthur, 226 Kan. 128 (1979):

"The fundamental rule of statutory construction, to which all other rules are subordinate, is that the purpose and intent of the legislature governs when that intent can be ascertained from the statutes. When a statute is plain and unambiguous the court must give effect to the intention of the legislature as expressed, rather than determine what the law should or should not be. Thomas County Taxpayers Ass'n v. Finney, 223 Kan. 434, 573 P.2d 1073 (1978)." 226 Kan. at 135.

Further, it is not the function of the courts, or of this office, to expand or broaden the plain letter or meaning of a statute. State v. One Bally Coney Island No. 21011 Gaming Table, 174 Kan. 757, Syl. para. 2, 258 P.2d 225 (1953). In determining legislative intent, the purpose, necessity and effect of the statute must be observed. State ex rel. Stephan v. Lane, 228 Kan. 379, 390, 614 P.2d 987 (1980).

Finally, in order to ascertain the legislative intent, we are not permitted to consider only an isolated part or parts of an act, but rather, must consider and construe together all parts thereof in pari materia.

Brown v. Keill, 224 Kan. 195, 200, 580 P.2d 867 (1978). To this end, we are required, so far as practicable, to reconcile the different provisions so as to make them consistent, harmonious and sensible. Harris v. Shanahan, 192 Kan. 629, 635, 390 P.2d 772 (1964); Rogers v. Shanahan, 221 Kan. 221, 228, 565 P.2d 1384 (1976).

We believe that the intent of the legislature in enacting K.S.A. 1982 Supp. 31-157 was to provide a procedure to permit the state, through the state fire marshal, to certify individuals as arson investigators for the purpose of enforcing a narrowly prescribed area of state law. In our judgment, application of the foregoing rules of statutory construction leads to the conclusion that the state fire marshal, with the assistance of an advisory committee, is solely responsible for establishing the standards for certification of arson investigators. Consequently, candidates for certification as arson investigators are not required to comply with the provisions of the law enforcement training act, except for the firearm training course or courses described in K.S.A. 1982 Supp. 31-157(b).

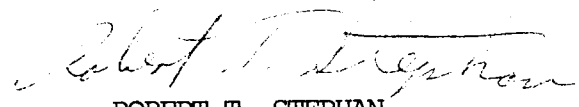
Your second inquiry concerns the scope of K.S.A. 1982 Supp. 31-157(c), supra. By its terms, this provision exempts from the certification requirements established by the fire marshal persons employed as an arson investigator prior to July 1, 1982. Although the scope of the exemption is unclear, it is clear that nothing in the act [31-157] requires compliance with the fire marshal's certification standards to (1) continue employment, (2) remain eligible for promotion, or (3) affect pension rights. However, the provision does not expressly exempt persons employed as arson investigators prior to July, 1982, from the fire marshal's requirements for purposes of being certified as an arson investigator by the state fire marshal which certification carries the authority to make arrests, carry firearms and conduct searches and seizures. Such uncertified arson investigators employed prior to July 1, 1982, are not endowed by virtue of this statute with those powers of certified investigators to arrest, carry firearms or make searches and seizures. [We note that whether certified or uncertified, an arson investigator must have received the firearms training specified in K.S.A. 1982 Supp. 31-157(b) in order to carry firearms.] Consequently, unless an arson investigator [even if employed before July 1, 1982] has complied with the requirements established by the fire marshal and successfully completed the firearm training course or courses, discussed above, the arson investigator could not exercise the authority of a certified arson investigator, i.e. make arrests, carry firearms and conduct searches and seizures during the course of his or her employment as an arson investigator.

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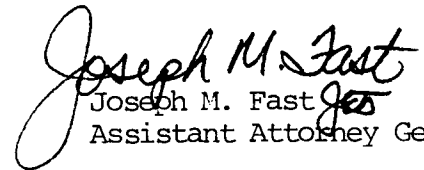
In conclusion, to become a certified arson investigator and exercise the police powers attendant thereto, an individual must meet the requirements established by rules and regulations of the state fire marshal and successfully complete a firearm training course as prescribed for law enforcement officers under K.S.A. 1982 Supp. 74-5604a. An individual need not complete the basic training course established for law enforcement officers in accordance with K.S.A. 74-5607a in order to be certified as an arson investigator.

An individual employed as an arson investigator prior to July 1, 1982, need not receive certification from the fire marshal to continue such employment; however, such an individual is not empowered by K.S.A. 1982 Supp. 31-157 to carry out the police powers afforded certified arson investigators.

Very truly yours,



ROBERT T. STEPHAN
Attorney General



Joseph M. Fast
Assistant Attorney General

RTS:JEF:JMF:may