



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

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

March 22, 1984

ATTORNEY GENERAL OPINION NO. 84-27

Mr. L. O. Bengtson
City Attorney
114 East Iron
P. O. Box 903
Salina, Kansas 67401

Re: Labor and Industries--Workmen's Compensation--
Firemen's Relief Association Members; Procedure
for Exemption

Synopsis: Pursuant to K.S.A. 44-505d, the governing body
of a firemen's relief association in any unit
of local government may conduct an election,
prior to August 1 of any year, to determine
whether its members shall be excepted from the
provisions of the Workmen's Compensation Act.
Cited herein: K.S.A. 44-505d, 1984 House Bill
No. 2635.

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Dear Mr. Bengtson:

You request our interpretation of K.S.A. 44-505d. Specifically,
you advise that the Firemen's Relief Association of the city
of Salina did not, prior to August 1, 1975, conduct an election
to determine whether its members desired to be exempt from
the provisions of the Workmen's Compensation Act, and ask whether
said members may now conduct such an election.

K.S.A. 44-505d provides as follows:

"(a) The governing body of each firemen's
relief association in any unit of local

government of this state shall conduct an election among all of the members of the association prior to August 1, 1975, to determine whether such members shall be excepted from the provisions of the workmen's compensation act. If a majority of the members of any firemen's relief association in any unit of local government of this state vote in such election to except the members of such association from the provisions of the workmen's compensation act, the governing body of such association and the governing body of such unit of local government may enter into an agreement in writing to except such members from the provisions of the workmen's compensation act. Upon the execution of such agreement, the governing body of the firemen's relief association shall file a copy of the agreement and a statement of election to except the members of such association from the provisions of the workmen's compensation act with the director of workers' compensation.

"(b) Prior to August 1 in any year thereafter, the governing body of any firemen's relief association which has been excepted from the provisions of the workmen's compensation act under subsection (a), may conduct an election among all of the members of such association to determine whether such members shall be covered by the provisions of the workmen's compensation act in the manner otherwise provided by law. If a majority of the members of such association vote in such election to come within the provisions of the workmen's compensation act, the governing body of the association shall file with the director of workers' compensation a written statement of election to come within the provisions of the workmen's compensation act. Upon the filing of such statement, the members of such association shall be covered by the provisions of the workmen's compensation act.

"(c) Subsequent to an election resulting in coverage under the workmen's compensation act under subsection (b) and prior to August 1 of any year thereafter, the governing body of any such firemen's relief association may conduct an election in the manner provided

in subsection (a) to except again the members of such association from the provisions of the workmen's compensation act as provided in subsection (a)."

If one were to interpret this statute according to its literal words, without consideration of legislative intent, one might conclude that K.S.A. 44-505d(a) requires an election prior to August 1, 1975, to decide whether a firemen's relief association wishes to be exempt from coverage under the workmen's compensation act. It is clear that K.S.A. 44-505d(b) allows associations which elected to be exempt under subsection (a) to hold subsequent elections to choose whether to reinstate coverage, and that K.S.A. 44-505d(c) allows associations which chose to reinstate coverage by means of subsection (b), to again hold an election to exempt themselves from coverage under the act. It might be argued that once an election has been made under the provisions of subsection (a) to exempt an association from coverage of the workmen's compensation act, such an association may "flip-flop" from non-coverage, to coverage, and back again, but that an association not exempting itself by election prior to August 1, 1975, is forever barred from exercising such option. Such a literal construction is not mandated, however, since legislative intent must govern, even though it does not follow the literal words of a statute. Baker v. R.D. Anderson Construction Co., 7 K.A.2d 568, 571 (1982).

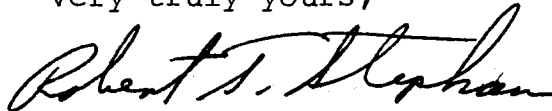
A consideration of the history of K.S.A. 44-505d indicates that the legislature did not intend that subsections (b) and (c) thereof apply only to associations which chose the option of non-coverage in an election conducted before August 1, 1975. Specifically, committee minutes indicate that 1975 House Bill No. 2169 (codified at K.S.A. 44-505d) was introduced to address instances of duplicate or overlapping coverage under Workmen's Compensation and the Firemen's Relief Fund, and that the intent of the bill was to allow a firemen's relief association to elect which coverage it wanted. In our judgment, the legislature did not intend that a firemen's relief association be forever bound by its initial election to retain coverage under the Workmen's Compensation Act. Rather, we believe the legislature intended to authorize an election (by any association), prior to August 1 of any year, on the question of retaining workmen's compensation coverage. Accordingly, it is our opinion that pursuant to K.S.A. 44-505d, the governing body of a firemen's relief association in any unit of local government may conduct an election, prior to August 1 of any year, to determine whether its members shall be excepted from the provisions of the Workmen's Compensation Act.

Finally, it should be noted that Section 9 of 1984 House Bill No. 2635 would amend K.S.A. 44-505d as follows:

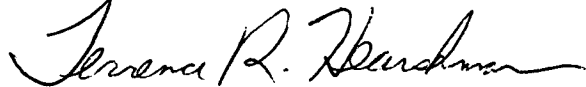
"On January 1, 1986, K.S.A. 44-505d is hereby amended to read as follows:

"On January 1, 1986, all elections in effect under this section prior to that date to except the members of a firemen's relief association from the provisions of the workmen's compensation act are void and all such members are covered by the workmen's compensation act."

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Terrence R. Hearschman
Assistant Attorney General

RTS:BJS:TRH:jm